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TITLE 9

FAMILY LAW

(CHAPTERS 25-34 IN VOLUME 6D)

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SUBTITLE 1. GENERAL PROVISIONS

CHAPTER 5

ARKANSAS CHILD SAFETY CENTER ACT

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9-5-103. Definitions.

As used in this chapter:

(1) "Board" means the Board of Directors of the Children's Advocacy Centers of Arkansas;

(2) "Children's Advocacy Centers of Arkansas" means a nonprofit organization that is a chapter of the National Children's Alliance operating in this state for the purpose of promoting, assisting, and supporting the development, growth, and continuation of child safety centers in this state;

(3)(A) "Child safety center" means a nonprofit child-friendly facility that provides a location for forensic interviews and forensic medical examinations and ensures access for specialized mental health services during the course of a child maltreatment investigation.

(B) A child safety center is commonly known as a "child advocacy center";

(4) "Multidisciplinary team" means a collaborative group of individual professionals from diverse organizations and agencies who work together in a coordinated manner to ensure an effective response to child abuse and neglect cases so a child victim is not overlooked and essential services are provided in a timely manner; and

(5) "Multidisciplinary team facilitator" means a person who:

(A) Is responsible for establishing and sustaining:

(i) Relationships among members of the multidisciplinary team that promote collaboration; and

(ii) An atmosphere of trust and safety to partner for success in child abuse and neglect cases;

(B) Serves as an advocate for the multidisciplinary team model;

(C) Works with the members of the multidisciplinary team to ensure effective implementation of the multidisciplinary team model; and

(D) Assumes the role of a multidisciplinary team coordinator and does not perform the role of a director or leader.

History. Acts 2007, No. 703, § 5; 2013, No. 568, § 1; 2021, No. 975, § 2.

A.C.R.C. Notes. Acts 2021, No. 975, § 1, provided: "Legislative intent. The provisions of this act are not intended to change the current structure of multidisciplinary teams in Arkansas."

Amendments. The 2021 amendment rewrote the section.

9-5-104. Duties of the Children's Advocacy Centers of Arkansas — Child safety centers.

(a) The Department of Finance and Administration shall:

(1) Distribute grants to one (1) or more child safety centers and an entity receiving funding under this chapter;

(2)(A) Retain oversight of all grants distributed under this chapter.

(B) The Secretary of the Department of Finance and Administration or his or her designee shall be the agency contact concerning the oversight of grants distributed under this chapter; and

(3) Evaluate the Children's Advocacy Centers of Arkansas's quarterly reports concerning funding received by the Children's Advocacy Centers of Arkansas and each child safety center.

(b) The Department of Finance and Administration and the Children's Advocacy Centers of Arkansas shall work together to:

(1)(A) Establish the criteria for grant applications and awards under this chapter.

(B) A grant application shall be submitted directly to the Department of Finance and Administration;

(2)(A) Establish the criteria for awarding or denying a grant application under this chapter.

(B) The Department of Finance and Administration shall remit funds awarded to a child safety center directly to the child safety center;

(3) Annually evaluate each child safety center for compliance with the best program practices of the Children's Advocacy Centers of Arkansas, fiscal, and training requirements under this chapter;

(4) Promote and uphold procedures to implement this chapter and the forms for the evaluation of each child safety center;

(5) Adopt a uniform system of recordkeeping and reporting to ensure the proper handling of funds by child safety centers and to ensure uniformity and accountability by child safety centers;

(6) Provide training and technical assistance to child safety centers to ensure best practice standards for forensic interviews, prevention, and medical evaluations; and

(7) Coordinate and provide training statewide for multidisciplinary teams.

(c) The Children's Advocacy Centers of Arkansas may enter into contracts with any entity to fulfill its duties under this chapter.

(d) A child safety center shall:

(1) Receive, review, and track reporting from the Department of Human Services relating to the alleged abuse or neglect of a child in order to ensure a consistent and comprehensive approach to providing services to a child and the family of a child who is the victim of alleged abuse or neglect;

(2) Work with participating agencies relating to the delivery of services to a child and the family of a child who is the alleged victim of abuse or neglect;

(3) Provide support services to a child and the family of a child who is the alleged victim of abuse or neglect;

(4) Provide forensic interviews that are conducted in a neutral, fact-finding manner and coordinated to avoid duplicative interviewing;

(5) Provide access to specialized medical evaluations and treatment services to a child who is the alleged victim of abuse or neglect;

(6) Provide access to evidence-based, trauma-focused mental health services to a child who is the alleged victim of abuse or neglect; and

(7) Provide a child-focused setting that is comfortable, private, and physically safe for a diverse population.

History. Acts 2007, No. 703, § 5; 2021, No. 975, § 3.

A.C.R.C. Notes. Acts 2021, No. 975, § 1, provided: "Legislative intent. The provisions of this act are not intended to change the current structure of multidisciplinary teams in Arkansas."

Amendments. The 2021 amendment rewrote the section.

9-5-105. Receipt of money.

Under this chapter and in the administration of the Arkansas Children's Advocacy Center Fund, the Department of Finance and Administration and the Children's Advocacy Centers of Arkansas shall not accept money or other assistance from the United States Government or any other entity or individual if the acceptance would obligate the State of Arkansas except to the extent that money is available in the fund.

History. Acts 2007, No. 703, § 5; 2021, No. 975, § 4.

A.C.R.C. Notes. Acts 2021, No. 975, § 1, provided: "Legislative intent. The provisions of this act are not intended to change the current structure of multidisciplinary teams in Arkansas."

Amendments. The 2021 amendment substituted "Department of Finance and Administration and the Children's Advocacy Centers of Arkansas" for "Arkansas Child Abuse/Rape/Domestic Violence Commission" and "United States" for "federal".

9-5-106. Disbursement of funds.

(a) The Department of Finance and Administration may disburse money appropriated from the Arkansas Children's Advocacy Center Fund for the following purposes:

(1) To satisfy contractual obligations entered into by the Children's Advocacy Centers of Arkansas in order for the duties of the Children's Advocacy Centers of Arkansas under this section to be performed;

(2) To make grants to child safety centers that meet the requirements of this section; and

(3) To compensate the Children's Advocacy Centers of Arkansas or its designee for administration costs associated with the performance of duties under this chapter.

(b) The Children's Advocacy Centers of Arkansas may contract with a physician or healthcare entity that specializes in child abuse to provide expert advice, medical evaluations, and medical training to child safety centers.

History. Acts 2007, No. 703, § 5; 2021, No. 975, § 5.

A.C.R.C. Notes. Acts 2021, No. 975, § 1, provided: "Legislative intent. The provisions of this act are not intended to change the current structure of multidisciplinary teams in Arkansas."

Amendments. The 2021 amendment rewrote the section.

9-5-109. Eligibility for contracts.

(a) A public entity or a nonprofit entity is eligible for a contract under § 9-5-107 if the entity:

(1) Has a signed memorandum of understanding as provided by § 9-5-110;

(2) Operates under the authority of a governing board;

(3) Participates on a multidisciplinary team of persons involved in the investigation or prosecution of child abuse cases;

(4) Has developed a method of statistical information gathering on children receiving services through the child safety center and shares the statistical information with the statewide organization, the Department of Human Services, and the Attorney General upon request;

(5) Has a volunteer program;

(6) Employs an executive director who is answerable to the board of directors of the public or nonprofit entity and who is not the exclusive salaried employee of any public agency partner;

(7) Provides for ongoing training for child safety center staff to provide best practices in forensic interviewing and medical and mental examinations to children who are examined at child safety centers; and

(8) Operates under a working protocol that includes, at a minimum, a statement of:

(A) The child safety center's mission;

(B) Each agency's role and commitment to the child safety center;

(C) The type of cases to be handled by the child safety center;

(D) The child safety center's procedures for conducting case reviews and forensic interviews and for ensuring access to specialized medical services and mental health services; and

(E) The child safety center's policies regarding confidentiality and conflict resolution.

(b)(1) The Children's Advocacy Centers of Arkansas may waive the requirements specified in subsection (a) of this section if the Children's Advocacy Centers of Arkansas determines that the waiver will not adversely affect the child safety center's ability to carry out its duties under this chapter.

(2) Any waiver that is granted under subdivision (b)(1) of this section shall be identified in the written contract with the child safety center.

(c) Funds shall be withheld from an established child safety center that no longer meets the standards for funding.

History. Acts 2007, No. 703, § 5; 2021, No. 975, § 6.

A.C.R.C. Notes. Acts 2021, No. 975, § 1, provided: "Legislative intent. The provisions of this act are not intended to change the current structure of multidisciplinary teams in Arkansas."

Amendments. The 2021 amendment substituted "Children's Advocacy Centers of Arkansas" for "Arkansas Child Abuse/Rape/Domestic Violence Commission" preceding "may waive" and for "commission" preceding "determines" in (b)(1).

9-5-111. Fiscal requirements.

Every child safety center shall:

(1) Incorporate in this state as a private nonprofit corporation that is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code of 1986, 26 U.S.C. § 501(c)(3), as it existed on January 1, 2007, and that has the primary purpose of providing services to child victims of child abuse;

(2) Be governed by a board of directors;

(3) Develop and implement written personnel policies that state the child safety center's employment practices;

(4) Develop and implement written procedures that conform with the uniform system of recordkeeping developed by the Department of Finance and Administration and the Children's Advocacy Centers of Arkansas to ensure proper handling of funds; and

(5) Provide the commission or its designee with statistical data that states the following:

(A) The type of investigative services and the number of children served by each type of investigative service provided by the child safety centers;

(B) The number, race, age, and gender of the children served each year; and

(C) The outcomes of services to children provided by the child safety centers, including without limitation:

(i) The number of founded maltreatment reports; and

(ii) The number of unfounded maltreatment reports and the ratio between founded and unfounded reports for each year.

History. Acts 2007, No. 703, § 5; 2021, No. 975, § 7.

A.C.R.C. Notes. Acts 2021, No. 975, § 1, provided: "Legislative intent. The provisions of this act are not intended to change the current structure of multidisciplinary teams in Arkansas."

Amendments. The 2021 amendment substituted "Department of Finance and Administration and the Children's Advocacy Centers of Arkansas" for "Arkansas Child Abuse/Rape/Domestic Violence Commission or its designee" in (4).

9-5-112. Rights and responsibilities.

(a) The Children's Advocacy Centers of Arkansas or its designee may enter the premises of a child safety center at any time to ensure compliance with this chapter and the rules promulgated by the Children's Advocacy Centers of Arkansas under this chapter.

(b) Each child safety center shall submit annually an audit, a budget, bylaws, and policies to the Board of Directors of the Children's Advocacy Centers of Arkansas.

(c) The board shall include two (2) financial experts who shall provide financial oversight, review grants, and evaluate each child safety center.

History. Acts 2007, No. 703, § 5; 2021, No. 975, § 8.

A.C.R.C. Notes. Acts 2021, No. 975, § 1, provided: "Legislative intent. The provisions of this act are not intended to change the current structure of multidisciplinary teams in Arkansas."

Amendments. The 2021 amendment added the (a) designation and added (b) and (c); and, in (a), substituted "Children's Advocacy Centers of Arkansas" for "Arkansas Child Abuse/Rape/Domestic Violence Commission" and for "commission".

9-5-113. Reports.

The Children's Advocacy Centers of Arkansas or its designee shall provide an annual report by March 1 of each year to the Department of Human Services, Division of Arkansas State Police, Chair of the Senate Interim Committee on Children and Youth, and the Chair of the House Committee on Aging, Children and Youth, Legislative and Military Affairs containing the following information:

(1) The incidence of child abuse in this state based on information obtained from child safety centers under this chapter;

(2) A description of child safety centers that meet the requirements of the Department of Finance and Administration and the Children's

Advocacy Centers of Arkansas and receive funding from the Department of Finance and Administration;

(3) The number of children receiving investigative services by the child safety centers that receive funding from the Department of Finance and Administration under this chapter; and

(4) Outcome data provided by the child safety centers.

History. Acts 2007, No. 703, § 5; 2021, No. 975, § 9.

A.C.R.C. Notes. Acts 2021, No. 975, § 1, provided: "Legislative intent. The provisions of this act are not intended to change the current structure of multidisciplinary teams in Arkansas."

Amendments. The 2021 amendment, in the introductory language, substituted "Children's Advocacy Centers of Arkansas" for "Arkansas Child Abuse/Rape/Domestic Violence Commission" and inserted "Department of Human Services, Division of Arkansas State Police"; rewrote (2); substituted "Department of Finance and Administration" for "commission or its designee" in (3); and made a stylistic change.

SUBTITLE 2. DOMESTIC RELATIONS

CHAPTER 9

ADOPTION

SUBCHAPTER.
2. REVISED UNIFORM ADOPTION ACT.

SUBCHAPTER 2 — REVISED UNIFORM ADOPTION ACT

SECTION.
9-9-208. How consent is executed.
9-9-209. Withdrawal of consent.
9-9-211. Report of petitioner's expenditures.
9-9-217. Confidentiality of hearings and records.
9-9-220. Relinquishment and termination of parent and child relationship.
9-9-225. Voluntary post-adoption contact agreement.

9-9-206. Persons required to consent to adoption — Consideration for relinquishing minor for adoption.

CASE NOTES

ANALYSIS

Parents.
—Father.

Parents.

—Father.

Consent of the putative teenage father was required for the adoption of the child because the circuit court's findings that the father established the requisite relationship and that the proposed adoptive parents failed to prove that the putative father's consent was not required were not clearly erroneous. Furthermore, the circuit court's finding that the biological mother thwarted the putative father's efforts to establish a significant custodial, personal, or financial relationship after a period of time was not clearly erroneous. Noble v. Mayes, 2020 Ark. App. 517 (2020).

9-9-207. Persons as to whom consent not required.

CASE NOTES

Analysis

Consent Required.
Failure to Communicate or Care and Support.
—Failure to Provide for Care and Support.
—Time Period.

Consent Required.

Circuit court erred in granting a stepfather's petition to adopt and in finding that the biological father's consent was not required because the father's failure to provide financial support or communicate with his children for more than one year after he and the mother were divorced was legally justified given the circumstances that the mother purposely concealed the location of the children's residences in three states for five years, eliminated the father's ability to contact the children by telephone, changed her and the children's last names, and the California divorce judgment did not obligate the father to pay child support. French v. Hoelzeman, 2020 Ark. App. 543, 614 S.W.3d 850 (2020).

Father's consent was required for the adoption of a child because the child's maternal grandparents, who wished to adopt the child, failed to prove by clear and convincing evidence that the father had willfully or intentionally failed to provide meaningful support for the child for a period in excess of one year. The circuit court found that the father provided money and goods for the child by giving them to the child's mother for certain months and that the money and goods provided were significant and meaningful during the time frame. Bryan v. Findley (In re KAB), 2021 Ark. App. 24, 616 S.W.3d 260 (2021).

Failure to Communicate or Care and Support.

—Failure to Provide for Care and Support.

Circuit court clearly erred in finding that the father's consent to the adoption was not required based on a failure to provide for the care and support of the children under this section for a period of one year because there was no evidence that the father failed to provide for the children's care; he routinely exercised his visitation in the years following the divorce, and, during his visitation, the father provided the children with food and shelter and took them on various trips. Plymale v. Rogers (In re Adoption of A.M.P.), 2021 Ark. 125 (2021).

This section requires a showing that the parent failed to provide for the "care and support" of the child; though the care component of the statutory language is often overlooked, the statute requires a failure to provide both. Plymale v. Rogers (In re Adoption of A.M.P.), 2021 Ark. 125 (2021).

—Time Period.

Because the trial court expressly stated that child support was not owed, the father's failure to pay child support during that time period could not be held against him for purposes of consent under this section. Plymale v. Rogers (In re Adoption of A.M.P.), 2021 Ark. 125 (2021).

When the original divorce decree explicitly relieved the father of the duty to pay child support, the father's obligation to pay child support began to run when the court later ordered the father's obligation to pay child support to commence. Accordingly, the father's failure to provide support before that time could not be used against the father to obtain a stepparent adoption of the father's children without the father's consent because the mandated one-year period had yet to expire before the adoption petition was filed. Plymale v. Rogers, 2020 Ark. App. 568 (2020), vacated, 2021 Ark. 125 (2021).

9-9-208. How consent is executed.

(a) The required consent to adoption shall be executed at any time after the birth of the child and in the manner following:

(1) If by the individual to be adopted, in the presence of the court;

(2) If by an agency, by the executive head or other authorized representative, in the presence of a person authorized to take acknowledgments;

(3) If by any other person, in the presence of the court or in the presence of a person authorized to take acknowledgments;

(4) If by a court, by appropriate order or certificate.

(b) A consent which does not name or otherwise identify the adopting parent is valid if the consent contains a statement by the person whose consent it is that the person consenting voluntarily executed the consent irrespective of disclosure of the name or other identification of the adopting parent.

(c) If the parent is a minor, the writing shall be signed by a court-ordered guardian ad litem, who has been appointed by a judge of a court of record in this state to appear on behalf of the minor parent for the purpose of executing consent. The signing shall be made in the presence of an authorized representative of the Arkansas licensed placement agency taking custody of the child, or in the presence of a notary public, or in the presence and with the approval of a judge of a court of record of this state or any other state in which the minor was present at the time it was signed.

(d)(1) A parent whose consent to adoption is required under this subchapter shall have limited, independent legal representation for the purpose of:

(A) Executing the consent to adoption; and

(B) Withdrawing the consent to adoption if the parent elects to withdraw the consent as permitted under this subchapter.

(2) The attorney:

(A) Shall not represent any other party in the adoption; and

(B) Shall certify, by signing the writing after its execution by the parent, that:

(i) The attorney has explained to the parent the effect of consenting to the adoption; and

(ii) The parent appeared to consent voluntarily and of his or her own free will.

(3) This subsection shall not apply to an adoption if the petitioner is:

(A) A stepparent whose spouse is a natural or adoptive parent of the child to be adopted;

(B) Related to the child to be adopted within the second degree as defined in § 28-9-212; or

(C) Represented by an attorney pro bono in the adoption proceeding.

(4)(A) A parent whose consent to adoption is required under this subchapter may elect not to be represented by an independent attorney as provided in subdivision (d)(1) of this section by signing under oath, in the presence of a notary public, an affidavit that includes the following:

(i) A statement that the parent understands that he or she has been offered limited representation by an attorney, who does not also represent the petitioner, to provide him or her with independent legal advice concerning the effects of consenting to the adoption;

(ii) A statement that the parent understands that the petitioner is willing to pay for the limited representation; and

(iii) A statement that the parent has, after considering his or her right to an independent attorney, knowingly and voluntarily and without coercion or undue influence from any other person elected not to be represented by an attorney for the purpose of executing the consent and, if the parent elects, withdrawing the consent.

(B) This affidavit shall, before the petition is heard, be filed with the court having jurisdiction over the adoption proceeding.

(e)(1) If a parent whose consent to adoption is required under this subchapter does not speak English as a native language, the parent shall be provided a qualified interpreter for the purpose of interpreting the consent to adoption into the native language of the parent before its execution by the parent unless a petitioner is:

(A) A stepparent whose spouse is a natural or adoptive parent of the child to be adopted;

(B) Related to the child to be adopted within the second degree as defined in § 28-9-212; or

(C) Represented by an attorney pro bono in the adoption proceeding.

(2) For the purposes of this section, a qualified interpreter is an interpreter who appears on the current registry of court interpreters maintained by the Administrative Office of the Courts under § 16-10-1101 et seq.

(3) The interpreter services:

(A) Shall be paid for by the petitioner; and

(B) May be provided in person, by telephone, by a video-conferencing application, or by comparable means.

(4) If required, the consent to adoption shall:

(A) Identify the native language of the parent;

(B) Provide the name and qualifications of the qualified interpreter; and

(C) Describe the method used by the qualified interpreter to interpret the consent to adoption.

(5) A parent to whom subdivision (e)(1) of this section applies may elect not to use a court interpreter by signing under oath, in the presence of a notary public, an affidavit that includes the following:

(A) A statement that identifies the native language of the parent;

(B) An acknowledgment that the parent has been offered a qualified interpreter to interpret the consent to adoption into the parent's native language;

(C) An acknowledgment that the petitioner is willing to pay for the qualified interpreter;

(D) A statement that the parent elects not to use a qualified interpreter in executing the consent because:

(i) The parent is proficient enough in English to understand the legal documents without the assistance of a qualified interpreter; or

(ii) The parent's attorney can explain in the parent's native language the consent and implications of signing a consent to adoption; and

(E) A statement that the parent elects not to use a qualified interpreter knowingly and voluntarily, and without coercion or undue influence from any other person.

(6) The affidavit under subdivision (e)(5) of this section shall be:

(A) In English;

(B) Translated into the native language of the parent by a qualified interpreter; and

(C) Filed, before the petition is heard, with the court having jurisdiction over the adoption proceeding.

History. Acts 1977, No. 735, § 8; A.S.A. 1947, § 56-208; Acts 1991, No. 774, § 1; 2021, No. 599, § 1.

Amendments. The 2021 amendment added (d) and (e).

9-9-209. Withdrawal of consent.

(a) A consent to adoption cannot be withdrawn after the entry of a decree of adoption.

(b)(1)(A) A natural person may withdraw his or her consent to adopt within ten (10) calendar days, or, if a waiver of the ten-day period is elected under subdivision (b)(3) of this section, five (5) calendar days after the consent to adopt is signed or the child is born, whichever is later, by filing an affidavit with the probate division clerk of the circuit court in the county designated by the consent as the county in which the guardianship petition will be filed, if there is a guardianship, or where the petition for adoption will be filed, if there is no guardianship.

(B)(i) If the ten-day period, or, if a waiver of the ten-day period is elected under subdivision (b)(3) of this section, the five-day period ends on a weekend or a legal holiday, the natural person may file the affidavit the next working day.

(ii) No fee shall be charged for the filing of the affidavit.

(2) If a natural person is consenting to the adoption, the consent shall state that the person has the right of withdrawal of consent and shall provide the address of the probate division clerk of the circuit court of the county in which the guardianship will be filed, if there is a guardianship, or where the petition for adoption will be filed, if there is no guardianship.

(3) If a natural person is consenting to the adoption, the consent shall state that the person may waive the ten-day period for the

withdrawal of consent for an adoption and elect to limit the maximum time for the withdrawal of consent for an adoption to five (5) days.

(c)(1) The court may excuse the period for filing a withdrawal of consent under subsection (b) of this section for a biological parent if a stepparent is adopting.

(2) The period for filing a withdrawal of consent under subsection (b) of this section does not apply to:

(A) An agency as defined in § 9-9-202; or

(B) A minor:

(i) Who is over twelve (12) years of age; and

(ii) Whose consent to adoption is required.

History. Acts 1977, No. 735, § 9; A.S.A. 1947, § 56-209; Acts 1991, No. 774, § 2; 1995, No. 1284, § 1; 2003, No. 1185, § 7; 2005, No. 437, § 3; 2009, No. 230, § 1; 2021, No. 506, § 1; 2021, No. 993, § 1.

Amendments. The 2021 amendment by No. 506 redesignated former (b)(1) as (b)(1)(A), (b)(1)(B)(i), (b)(1)(B)(ii), and (b)(1)(C); substituted "the consent to adopt is" for "it is" in (b)(1)(A); and substituted "twelve (12) years of age" for "ten (10) years of age" in (b)(1)(C).

The 2021 amendment by No. 993 redesignated former (b)(1) as (b)(1)(A), (b)(1)(B)(i), and (b)(1)(B)(ii); substituted "A natural person may withdraw his or her consent to adopt" for "A consent to adopt may be withdrawn" in (b)(1)(A); inserted "natural" in (b)(1)(B)(i); deleted the last sentence of former (b)(1); added "If a natural person is consenting to the adoption" in (b)(2) and (b)(3); and added (c).

9-9-211. Report of petitioner's expenditures.

(a) Except as specified in subsection (b) of this section, the petitioner, in any proceeding for the adoption of a minor, shall file, before the petition is heard, a full accounting report in a manner acceptable to the court of all disbursements of anything of value made or agreed to be made by or on behalf of the petitioner in connection with the adoption. The petitioner shall file a sworn affidavit showing any expenses incurred in connection with:

(1) The birth of the minor;

(2) Placement of the minor with petitioner;

(3) Medical or hospital care received by the mother or by the minor during the mother's prenatal care and confinement;

(4) Services relating to the adoption or to the placement of the minor for adoption which were received by or on behalf of the petitioner, either natural parent of the minor, or any other person; and

(5) Fees charged by all attorneys involved in the adoption, including those fees charged by out-of-state attorneys.

(b) This section does not apply to an adoption by a stepparent whose spouse is a natural or adoptive parent of the child, or to an adoption where the person to be adopted is an adult, or where the petitioner and the minor are related to each other in the second degree.

(c) The petitioner shall file a signed, sworn affidavit verifying that all expenses as required by this section have been truthfully listed and shall be informed by the court as to the consequences of knowingly making false material statements.

(d) A full accounting report required under subsection (a) of this section shall include:

(1) The amounts paid;

(2) An itemization of expenses listed in § 9-9-206(c); and

(3) The time periods during which each reimbursement or benefit has been paid or will be paid.

(e)(1) A parent or guardian whose consent to adoption is required under this subchapter and who receives reimbursement for an expense incurred or a fee for services rendered incidental to prenatal, delivery, and postnatal care shall file:

(A) A full accounting report of anything of value that has been or will be received from the petitioner or a third party acting on behalf of the petitioner in connection with the adoption; and

(B) An affidavit verifying the full accounting report.

(2) A full accounting report required under subdivision (e)(1) of this section shall include:

(A) The amounts paid;

(B) An itemization of expenses listed in § 9-9-206(c); and

(C) The time periods during which each reimbursement or benefit has been paid or will be paid.

History. Acts 1977, No. 735, § 11; 1985, No. 107, § 1; A.S.A. 1947, § 56-211; Acts 2021, No. 599, § 2.

Amendments. The 2021 amendment added (d) and (e).

9-9-217. Confidentiality of hearings and records.

(a) Notwithstanding any other law concerning public hearings and records:

(1)(A) All hearings held in proceedings under this subchapter shall be held in closed court without admittance of any person other than essential officers of the court, the parties, their witnesses, counsel, persons who have not previously consented to the adoption but are required to consent, and representatives of the agencies present to perform their official duties.

(B)(i) A member of the General Assembly may attend an adoption hearing related to a juvenile case that is held under the Arkansas Juvenile Code of 1989, § 9-27-301 et seq., unless the court excludes the member of the General Assembly based on the:

(a) Best interest of the child; or

(b) Court's authority under the Arkansas Rules of Civil Procedure or the Arkansas Rules of Evidence.

(ii) Except as otherwise provided by law, a member of the General Assembly who attends a hearing in accordance with subdivision (a)(1)(B)(i) of this section shall not disclose information obtained during his or her attendance at the hearing.

(C)(i)*(a)* A Child Welfare Ombudsman may attend an adoption hearing related to a juvenile case under the Arkansas Juvenile Code of 1989, § 9-27-301 et seq.

(b) However, a court may exclude the Child Welfare Ombudsman from an adoption hearing if:

(1) It is in the best interest of the child; or

(2) The reason for the exclusion is based on the authority of the court under the Arkansas Rules of Civil Procedure or the Arkansas Rules of Evidence.

(ii) Unless otherwise allowed by law, the Child Welfare Ombudsman shall not disclose information that he or she obtains through his or her attendance at an adoption hearing held under this subchapter; and

(2)(A) Adoption records shall be closed, confidential, and sealed unless authority to open them is provided by law or by order of the court for good cause shown.

(B)(i) When an adoption is filed or heard pursuant to the Arkansas Juvenile Code of 1989, § 9-27-301 et seq., any portion of the court file relating to the adoption shall be maintained separately from the file of other pending juvenile matters concerning the juvenile who is the subject of the adoption or the family of the juvenile.

(ii) Once final disposition is made in the adoption proceedings, the adoption file shall be transferred from the clerk who is the custodian of juvenile records to the clerk who is the custodian of records.

(iii) The entry of the adoption decree will be entered by the clerk in the book containing adoption records.

(iv) The clerk shall assign the file a docket number, shall prepare an application for a new birth record as provided in this section, and shall maintain the file as if the case had originated as an adoption case.

(v) No filing fee shall be assessed by the clerk upon the transfer and creation of the new adoption file.

(vi) Any adoption record shall be handled as provided in this section.

(C)(i) In the event an adoption record is randomly selected to be audited for determination of compliance with requirements found in federal laws pertaining to periodic and dispositional review of foster care cases, the Administrator of Adoptions of the Department of Human Services is authorized to open the file notwithstanding any section in this subchapter prohibiting disclosure of adoption records.

(ii) It shall be the responsibility of the administrator to procure and provide from this file all records pertinent to the federal requirements under review.

(iii) The remainder of the record shall remain sealed. Such portions of the record that may be removed shall be returned to the sealed file upon completion of the federal audit.

(iv) No one shall be permitted to review the removed portion of the record except in an official capacity, and, except for uses required by the federal audit in compliance with state laws and rules and federal statutes and regulations, such a person shall be bound to keep the contents of such records confidential.

(D)(i) In the event the department has the opportunity to enhance its federal funding by a review of its adoptions records, then the administrator is authorized to open such files notwithstanding any section in this subchapter.

(ii) It shall be the responsibility of the administrator to procure and provide from this file all records pertinent to the review.

(iii) The remainder of the record shall remain sealed.

(iv) The portion of the record that may be removed shall be returned to the sealed file upon completion of the review.

(v) No one shall be permitted to review the removed portion of the record except in an official capacity, and, except for uses required to provide for the enhancement of possible federal funding in compliance with state laws and rules and federal statutes and regulations, such a person shall be bound to keep the contents of such records confidential.

(E)(i) In the event that an adoptive family contacts the department and indicates a desire for the placement of a subsequent child and no more than five (5) years have lapsed since the adoption file has been sealed, the department is authorized to unseal the adoption file notwithstanding any section in this subchapter.

(ii) It shall be the responsibility of the administrator to remove the home study from the file and make a copy of the home study.

(iii) The remainder of the file shall remain sealed.

(iv) The administrator shall return the home study to the file, which shall then be resealed.

(v) The department shall be permitted to use a copy of the original home study.

(vi) The adoptive family shall be permitted to use a copy of the original home study with a petition to adopt a subsequent child from the department if the original home study is accompanied by an update.

(b) The provisions of this section shall not prohibit the disclosure of information pursuant to § 9-9-501 et seq.

(c) All papers and records pertaining to adoptions prior to May 19, 1986, are declared to be confidential and shall be subject to disclosure only pursuant to this section.

(d)(1) All records of any adoption finalized in this state shall be maintained for ninety-nine (99) years by the agency, person, entity, or organization that handled the adoption.

(2) If the agency, person, entity, or organization that handled the adoption ceases to function, all adoption records shall be transferred to the department or another licensed agency within this state with notice to the department.

History. Acts 1986 (2nd Ex. Sess.), No. 23, §§ 2, 3; A.S.A. 1947, §§ 56-223, 56-224; Acts 1993, No. 758, § 3; 1999, No. 945, §§ 1, 2; 2003, No. 650, § 4; 2003, No. 1166, § 1; 2005, No. 1685, § 2; 2019, No. 315, §§ 708, 709; 2019, No. 329, § 2; 2019, No. 945, § 2; 2021, No. 470, § 1.

Amendments. The 2021 amendment substituted “disclose” for “redisclose” in (a)(1)(B)(ii).

9-9-220. Relinquishment and termination of parent and child relationship.

(a) With the exception of the duty to pay child support, the rights of a parent with reference to a child, including parental right to control the child or to withhold consent to an adoption, may be relinquished and the relationship of parent and child terminated in or prior to an adoption proceeding as provided in this section. The duty of a parent to pay child support shall continue until an interlocutory decree of adoption is entered.

(b) All rights of a parent with reference to a child, including the right to receive notice of a hearing on a petition for adoption, may be relinquished and the relationship of parent and child terminated by a writing, signed by an adult parent, subject to the court's approval.

If the parent is a minor, the writing shall be signed by a guardian ad litem who is appointed to appear on behalf of the minor parent for the purpose of executing such a writing. The signing shall occur in the presence of a representative of an agency taking custody of the child, or in the presence of a notary public, whether the agency is within or without the state, or in the presence and with the approval of a judge of a court of record of this state or any other state in which the minor was present at the time it was signed. The relinquishment shall be executed in the same manner as for a consent to adopt under § 9-9-208.

(1)(A) The relinquishment may be withdrawn within ten (10) calendar days, or, if a waiver of the ten-day period is elected under subdivision (b)(3) of this section, five (5) calendar days after it is signed or the child is born, whichever is later.

(i) Notice of withdrawal shall be given by filing an affidavit with the probate division clerk of the circuit court in the county designated by the writing as the county in which the guardianship petition will be filed if there is a guardianship, or where the petition for adoption will be filed, if there is no guardianship. If the ten-day period, or, if a waiver of the ten-day period is elected under subdivision (b)(3) of this section, the five-day period ends on a weekend or legal holiday, the person may file the affidavit the next working day.

(ii) No fee shall be charged for the filing of the affidavit.

(B) The relinquishment shall state that the parent has this right of withdrawal and shall provide the address of the probate division clerk of the circuit court in which the guardianship will be filed if there is a guardianship, or where the petition for adoption will be filed if there is no guardianship; or

(2) In any other situation, if notice of the adoption proceeding has been given to the parent and the court finds, after considering the circumstances of the relinquishment and the continued custody by the petitioner, that the best interest of the child requires the granting of the adoption.

(3) The relinquishment shall state that the person may waive the ten-day period for the withdrawal of relinquishment for an adoption

and to elect to limit the maximum time for the withdrawal of relinquishment for an adoption to five (5) days.

(c) In addition to any other proceeding provided by law, the relationship of parent and child may be terminated by a court order issued under this subchapter on any ground provided by other law for termination of the relationship, or on the following grounds:

(1) Abandonment as defined in § 9-9-202(7).

(2) Neglect or abuse, when the court finds the causes are irremediable or will not be remedied by the parent.

(A) If the parents have failed to make reasonable efforts to remedy the causes and such failure has occurred for twelve (12) months, such failure shall raise the rebuttable presumption that the causes will not be remedied.

(B) If the parents have attempted to remedy the causes but have failed to do so within twelve (12) months, and the court finds there is no reasonable likelihood the causes will be remedied by the eighteenth month, the failures shall raise the rebuttable presumption that the causes will not be remedied.

(3) That in the case of a parent not having custody of a child, his or her consent is being unreasonably withheld contrary to the best interest of the child.

(d) For the purpose of proceeding under this subchapter, a decree terminating all rights of a parent with reference to a child or the relationship of parent and child issued by a court of competent jurisdiction in this or any other state dispenses with the consent to adoption proceedings of a parent whose rights or parent and child relationship are terminated by the decree and with any required notice of an adoption proceeding other than as provided in this section.

(e) A petition for termination of the relationships of parent and child made in connection with an adoption proceeding may be made by:

(1) Either parent if termination of the relationship is sought with respect to the other parent;

(2) The petitioner for adoption, the guardian of the person, the legal custodian of the child, or the individual standing in parental relationship to the child or the attorney ad litem for the child;

(3) An agency; or

(4) Any other person having a legitimate interest in the matter.

(f)(1) The petition shall be filed and service obtained according to the Arkansas Rules of Civil Procedure.

(2) Before the petition is heard, notice of the hearing and the opportunity to be heard shall be given the parents of the child, the guardian of the child, the person having legal custody of the child, a person appointed to represent any party in this proceeding, and any person granted rights of care, control, or visitation by a court of competent jurisdiction.

(g) Notwithstanding the provisions of subsection (b) of this section, a relinquishment of parental rights with respect to a child executed under this section may be withdrawn by the parent, and a decree of a court terminating the parent-child relationship under this section may be vacated by the court upon motion of the parent if the child is not on placement for adoption and the person having custody of the child consents in writing to the withdrawal or vacation of the decree.

(h)(1) A parent who relinquishes his or her parental rights under this section shall have limited, independent legal representation for the purpose of:

(A) Executing the relinquishment; and

(B) Withdrawing the relinquishment if the parent elects to withdraw the relinquishment as permitted under this section.

(2) The attorney:

(A) Shall not represent any other party in the adoption; and

(B) Shall certify, by signing the writing after its execution by the parent, that:

(i) The attorney has explained to the parent the effect of relinquishing his or her parental rights; and

(ii) The parent appeared to relinquish his or her parental rights voluntarily and of his or her own free will.

(3) This subsection shall not apply to an adoption if the petitioner is:

(A) A stepparent whose spouse is a natural or adoptive parent of the child to be adopted;

(B) Related to the child to be adopted within the second degree as defined in § 28-9-212; or

(C) Represented by an attorney pro bono in the adoption proceeding.

(4)(A) A parent who relinquishes his or her parental rights under this section may elect not to be represented by an independent attorney as provided in subdivision (h)(1) of this section by signing under oath, in the presence of a notary public, an affidavit that includes the following:

(i) A statement that the parent understands that he or she has been offered limited representation by an attorney, who does not also represent the petitioner, to provide the parent with independent legal advice concerning the effects of relinquishing parental rights;

(ii) A statement that the parent understands that the petitioner is willing to pay for the limited representation; and

(iii) A statement that the parent has, after considering his or her right to an independent attorney, knowingly and voluntarily and without coercion or undue influence from any other person elected not to be represented by an attorney for the purpose of executing the relinquishment and, if the parent elects, withdrawing the relinquishment.

(B) This affidavit shall, before the petition is heard, be filed with the court having jurisdiction over the adoption proceeding.

(i)(1) If a parent who relinquishes his or her parental rights under this section does not speak English as a native language, the parent shall be provided a qualified interpreter for the purpose of interpreting the relinquishment into the native language of the parent before its execution by the parent unless a petitioner is:

(A) A stepparent whose spouse is a natural or adoptive parent of the child to be adopted;

(B) Related to the child to be adopted within the second degree as defined in § 28-9-212; or

(C) Represented by an attorney pro bono in the adoption proceeding.

(2) For purposes of this section, a qualified interpreter is an interpreter who appears on the current registry of court interpreters maintained by the Administrative Office of the Courts under § 16-10-1101 et seq.

(3) The interpreter services:

(A) Shall be paid for by the petitioner; and

(B) May be provided in person, by telephone, by a video-conferencing application, or by comparable means.

(4) If required, the relinquishment shall:

(A) Identify the native language of the parent;

(B) Provide the name and qualifications of the qualified interpreter; and

(C) Describe the method used by the qualified interpreter to interpret the relinquishment.

(5) A parent to whom subdivision (i)(1) of this section applies may elect not to use a court interpreter by signing under oath, in the presence of a notary public, an affidavit that includes the following:

(A) A statement that identifies the native language of the parent;

(B) An acknowledgment that the parent has been offered a qualified interpreter to interpret the relinquishment into the parent's native language;

(C) An acknowledgment that the petitioner is willing to pay for the qualified interpreter;

(D) A statement that the parent elects not to use a qualified interpreter in executing the relinquishment because:

(i) The parent is proficient enough in English to understand the legal documents without the assistance of a qualified interpreter; or

(ii) The parent's attorney can explain in the parent's native language the relinquishment and implications of signing a relinquishment of parental rights; and

(E) A statement that the parent elects not to use a qualified interpreter knowingly and voluntarily, and without coercion or undue influence from any other person.

(6) The affidavit under subdivision (i)(5) of this section shall be:

(A) In English;

(B) Translated into the native language of the parent by a qualified interpreter; and

(C) Filed, before the petition is heard, with the court having jurisdiction over the adoption proceeding.

History. Acts 1977, No. 735, § 20; 1985, No. 879, §§ 2-4; A.S.A. 1947, § 56-220; Acts 1991, No. 774, § 5; 1991, No. 1214, § 2; 1995, No. 1184, § 22; 1995, No.

1284, § 2; 1995, No. 1335, § 6; 1997, No. 1227, § 15; 1999, No. 518, § 2; 1999, No. 945, § 3; 2001, No. 1779, § 1; 2003, No. 1185, § 8; 2003, No. 1743, § 1; 2009, No. 219, § 1; 2009, No. 230, § 2; 2021, No. 599, § 3.

Amendments. The 2021 amendment added (h) and (i).

9-9-225. Voluntary post-adoption contact agreement.

(a) In an adoption proceeding concerning a minor who is not in the custody of the Department of Human Services, a prospective adoptive parent may voluntarily enter into a written agreement with a birth parent of the minor concerning post-adoption exchange of information, communication, or other contact between the birth parent and the minor if:

(1) The birth parent has executed either a consent to adoption or relinquishment of parental rights;

(2) An order terminating the parental rights of the birth parent has not been entered by the court; and

(3) A final decree of adoption has not been entered by the court.

(b)(1) A post-adoption contact agreement may address one (1) or more of the following:

(A) The post-adoption sharing of information concerning the minor, birth parent, or adoptive parent;

(B) Post-adoption communication between the minor and the birth parent; or

(C) Post-adoption visitation between the minor and the birth parent.

(2) A post-adoption contact agreement shall not address custody of the minor.

(3) A post-adoption contact agreement shall:

(A) Be in writing;

(B) Be signed by all prospective adoptive parents and the birth parent entering into the agreement;

(C) Be verified by a notary public who certifies that each acknowledging party entered into the agreement knowingly and voluntarily, and without duress or coercion;

(D) State that the agreement complies with the requirements of this section;

(E) Be an independent contract;

(F) Describe the:

(i) Form and frequency of the information to be exchanged or the communication or contact to occur as agreed to by the parties to the agreement;

(ii) Degree of supervision, if any, that is required; and

(iii) Grounds, if any, for terminating the agreement in whole or in part;

(G) Include a statement acknowledging that:

(i) The post-adoption contact agreement does not impair the ability of a party to the agreement to change his or her place or state of residence;

(ii) The adoptive parent's judgment concerning the minor is in the best interest of the minor;

(iii) One (1) of the adoptive parents may terminate the contact with the birth parent in whole or in part at any time if an adoptive parent determines that the contact is not in the best interest of the minor; and

(iv) The parties to the post-adoption contact agreement have not relied on any representations other than those contained in the agreement;

(H) Not be deemed a condition precedent to a consent to adoption, relinquishment of parental rights, or entry of an adoption decree; and

(I) Include the following statements in bold type:

"1. This agreement shall only enter into force upon the entry of the final decree of adoption.

2. After the entry of a final decree of adoption, an adoption cannot be set aside due to the failure of an adoptive parent, a birth parent, or the minor to follow the terms of this agreement or a later modification to this agreement.

3. Each party acknowledges that he or she has entered into this agreement knowingly, voluntarily, and without duress or coercion.

4. A separate post-adoption contact agreement shall be executed for each birth parent who opts to enter into the agreement with the prospective adoptive parents."

(c)(1) A court shall make a finding approving a post-adoption contact agreement before finalizing the adoption if the court finds that the agreement:

(A)(i) Is in the best interest of the minor to be adopted.

(ii) In determining the best interests of the minor, the court may consider the preferences of the minor if the minor's consent to the adoption is required;

(B) Contains terms that are fair and reasonable;

(C) Meets the requirements of this section; and

(D) Has been entered into knowingly and voluntarily by all parties to the agreement, and without duress or coercion.

(2) The court shall not require execution of a post-adoption contact agreement under this section as a condition for granting an adoption.

(d) A modification of a post-adoption contact agreement shall be:

(1) In writing;

(2) Signed by each party to the post-adoption contact agreement; and

(3) Verified by a notary public.

(e)(1) A post-adoption contact agreement does not give any party any rights enforceable in the courts of this state.

(2)(A) The parties may seek to resolve a dispute arising from a post-adoption contact agreement through a mediator certified by the Arkansas Alternative Dispute Resolution Commission.

(B) In resolving the dispute, the mediator certified by the commission:

(i) Shall resolve the issue in a manner that is in the best interests of the minor and does not undermine the parental authority of the adoptive parent; and

(ii) May consider the preferences of the minor in determining the best interest of the minor if the minor is at least twelve (12) years of age.

(C) If mediation fails, the adoptive parents shall have the final decision as to what they deem is in the best interest of the minor.

(3) A post-adoption contact agreement under this section concerning a minor to be adopted shall not be binding when the minor attains eighteen (18) years of age.

History. Acts 2021, No. 838, § 1.

CHAPTER 10

PATERNITY

SUBCHAPTER 1 — GENERAL PROVISIONS

9-10-104. Suit to determine paternity of child born outside of marriage.

CASE NOTES

Standing.

Pursuant to a plain reading of subdivision (3) of this section and § 9-14-105(c), the daughter, now an adult, was authorized to pursue both the establishment of paternity and child support when the trial court made her a party in the case where the father made no showing as to why those statutes did not compel her participation as a party. Frazier v. Office of Child Support Enf't, 2021 Ark. App. 65, 618 S.W.3d 415 (2021).

9-10-109. Child support following finding of paternity.

CASE NOTES

Cited: Donham v. Frauenthal, 2021 Ark. App. 183 (2021).

9-10-113. Custody of child born outside of marriage.

CASE NOTES

Joint Custody.

Circuit court properly awarded joint custody to the parties because the issue of custody was squarely before the circuit court at the final hearing, and the record was more than sufficient to establish that the father was doing everything he could to be actively involved in the child's life—he was present at the birth, helped the mother with expenses while she was pregnant, exercised as much visitation as the mother would allow, and cared for the child when the child was with him, paid $400 a month to the mother without an order requiring him to do so, and offered to help buy things like diapers and food. Donham v. Frauenthal, 2021 Ark. App. 183 (2021).

CHAPTER 11

MARRIAGE

SUBCHAPTER.
1. General Provisions.
2. License and Ceremony.

Subchapter 1 — General Provisions

SECTION.
9-11-102. Minimum age — Parental or guardian consent — Definition.

9-11-102. Minimum age — Parental or guardian consent — Definition.

(a) Every male who is at least eighteen (18) years of age and every female who is at least eighteen (18) years of age shall be capable in law of contracting marriage.

(b)(1) However, a male or female who is at least seventeen (17) years of age but under the age of eighteen (18) years may contract marriage as provided under this subsection.

(2) As used in this subsection, "contracting party" means a male or female who is at least seventeen (17) years of age but under the age of eighteen (18) years.

(3) Before a marriage license may be issued under this subsection, a contracting party shall furnish the clerk with a verified affidavit signed in the presence of a notary public that states that the parent or parents or guardian of the contracting party consents to the marriage.

(4) The consent of both parents of a contracting party is necessary unless:

(A) The parents have been divorced and custody of the contracting party has been awarded to one (1) of the parents exclusive of the other;

(B) The custody of the contracting party has been surrendered by one (1) of the parents through abandonment or desertion, in which case the consent of the parent who has custody of the contracting party is sufficient; or

(C) A guardian has been appointed for the contracting party, in which case the consent of the guardian of the contracting party is sufficient.

(5) The consent of the parent or guardian may be voided by the order of a circuit court on a showing by clear and convincing evidence that:

(A) The parent or guardian is not fit to make decisions concerning the contracting party; and

(B) The marriage is not in the contracting party's best interest.

(6) There shall be a waiting period of five (5) business days for a marriage license issued under this subsection.

(7) If a contracting party has a pending case in a circuit court, a parent or guardian who files consent under this subsection shall immediately notify the circuit court and all parties and attorneys to the pending case.

History. Rev. Stat., ch. 94, § 2; C. & M. Dig., § 7037; Pope's Dig., § 9017; Acts 1941, No. 32, § 1; 1961, No. 497, § 1; 1963, No. 72, § 1; 1964 (1st Ex. Sess.), No. 5, § 1; 1971, No. 145, § 1; 1973, No. 79, § 1; 1981, No. 371, § 1; A.S.A. 1947, § 55-102; Acts 2007, No. 441, § 1; 2008 (1st Ex. Sess.), No. 3, § 1; 2009, No. 956, § 4; 2019, No. 849, § 1; 2021, No. 470, § 2.

Amendments. The 2021 amendment rewrote the section.

SUBCHAPTER 2 — LICENSE AND CEREMONY

SECTION.
9-11-213. Persons who may solemnize marriages.

9-11-213. Persons who may solemnize marriages.

(a) For the purpose of being registered and perpetuating the evidence thereof, marriage shall be solemnized only by the following persons:

(1) The Governor;

(2) Any former justice of the Supreme Court;

(3) Any judges of the courts of record within this state, including any former judge of a court of record who served at least four (4) years or more;

(4) Any justice of the peace, including any former justice of the peace who served at least two (2) terms since the passage of Arkansas Constitution, Amendment 55;

(5) Any regularly ordained minister or priest of any religious sect or denomination;

(6) The former mayor of any city of the first or second class who served at least five (5) years as mayor or the current mayor of any city or town;

(7) Any official appointed for that purpose by the quorum court of the county where the marriage is to be solemnized; or

(8) Any elected district court judge and any former municipal or district court judge who served at least four (4) years.

(b)(1) Marriages solemnized through the traditional rite of the Religious Society of Friends, more commonly known as "Quakers", are recognized as valid to all intents and purposes the same as marriages otherwise contracted and solemnized in accordance with law.

(2) The functions, duties, and liabilities of a party solemnizing marriage, as set forth in the marriage laws of this state, in the case of marriages solemnized through the traditional marriage rite of the Religious Society of Friends, shall be incumbent upon the clerk of the congregation or, in his or her absence, his or her duly designated alternate.

History. Rev. Stat., ch. 94, § 10; Acts 1873, No. 2, § 1, p. 2; C. & M. Dig., § 7046; Pope's Dig., § 9026; Acts 1947, No. 231, § 1; 1977, No. 95, § 2; 1979, No. 693, § 1; 1983, No. 850, § 1; A.S.A. 1947, § 55-216; Acts 1987, No. 394, § 1; 1997, No. 862, § 1; 2001, No. 1068, § 1; 2003, No. 1185, § 16; 2007, No. 98, § 1; 2021, No. 898, § 1.

Amendments. The 2021 amendment inserted "former mayor of any city of the first or second class who served at least five (5) years as mayor or the current" in (a)(6).

CHAPTER 12

DIVORCE AND ANNULMENT

SUBCHAPTER 3 — ACTIONS FOR DIVORCE OR ALIMONY

9-12-301. Grounds for divorce.

CASE NOTES

Cruelty.

Circuit court properly found that the husband proved and corroborated the ground of cruel and barbarous treatment for the parties' divorce because there was testimony that the wife intentionally changed the access code to the marital residence, removed the spare key, and then left the home with the husband's oxygen and medications inside, and what he had with him the day he was locked out of the marital home was insufficient for his needs. Neidhardt v. Neidhardt, 2020 Ark. App. 521 (2020).

9-12-312. Alimony — Child support — Bond — Method of payment — Definition.

CASE NOTES

ANALYSIS

Alimony.
—Contempt.
—Duration.
—Modification.
Child Support.

Alimony.

Circuit court did not overstate husband's available financial resources; while distributions from a Medicare set-aside annuity did not constitute income available to support the wife, other annuities did provide the husband with a substantial ability to pay. The circuit court also did not err in prorating future lump-sum distributions in its calculation of the amount of financial resources that were available to pay alimony. Cherry v. Cherry, 2021 Ark. 49, 617 S.W.3d 692 (2021).

Secondary factors weighed in favor of granting alimony to wife, as the marriage was of long duration, her employment prospects were not very good, and the cash from the sale of the marital assets was not sufficient to meet her reasonable expenses; while she had capacity to earn income and the husband was permanently and totally disabled, given her lack of formal education and limited work history, the nature of her employment likely would not greatly improve. Cherry v. Cherry, 2021 Ark. 49, 617 S.W.3d 692 (2021).

—Contempt.

Civil contempt upheld for failure to pay the amount of alimony ordered. Cherry v. Cherry, 2021 Ark. 49, 617 S.W.3d 692 (2021).

—Duration.

Wife did not present any compelling reason why the circuit court should have secured her alimony beyond the death of the husband, as she was able-bodied and employed at a salary equal to what her entire family lived on before the husband's accident; the circuit court did not err in failing to grant her request. Cherry v. Cherry, 2021 Ark. 49, 617 S.W.3d 692 (2021).

—Modification.

Circuit court did not clearly err when it found no reason to reassess the amount of alimony awarded in the 2016 order; the wife's employment situation had improved shortly after the 2016 order was entered, but the improvement was not so great as to make alimony unnecessary, plus the monthly expenses she predicted in her 2016 affidavit were essentially the same in 2018. Cherry v. Cherry, 2021 Ark. 49, 617 S.W.3d 692 (2021).

Child Support.

Circuit court did not err in its calculation of the amount of child support. The appellate court could not say that the circuit court's consideration of the additional time the father spent with the children was clearly erroneous. Townsend v. Townsend, 2021 Ark. App. 87 (2021).

Trial court erred in failing to include $48,000 annual alimony payments in its calculation of the husband's income for the purpose of determining the proper amount of child support because the husband received $48,000 annually from a group; and Section (II) of Ark. Sup. Ct. Admin. Order No. 10 defined income as any form of payment, which expressly included salaries. Freeman v. Freeman, 2021 Ark. App. 141, 620 S.W.3d 547 (2021).

9-12-315. Division of property — Definition.

CASE NOTES

ANALYSIS

Debts.
Property.
—Business.
—Marital Home.
—Personal Injury Claims.
Unequal Division.
—In General.

Debts.

Circuit court did not err in its division of marital property. Although the wife was awarded relatively fewer assets, she also escaped the lion's share of the marital debt. Townsend v. Townsend, 2021 Ark. App. 87 (2021).

Property.

—Business.

Given the conflicting testimony as to the value and assets of a business, especially the testimony of an accountant that the business was failing, and the circuit court's compliance with subdivision (a)(4) of this section, the entire business was properly awarded to the husband. Chandler v. Chandler, 2021 Ark. App. 42, 616 S.W.3d 279 (2021).

—Marital Home.

Circuit court did not err when it refused to grant the husband an unequal distribution of the marital residence because the wife's counsel described the marital home as property held as tenants by the entirety with no objection from the husband; thus, the circuit court correctly applied the presumption pertaining to property held as tenants by the entirety and correctly found that neither party had overcome that presumption by clear and convincing evidence. McKinnis v. McKinnis, 2020 Ark. App. 479, 612 S.W.3d 730 (2020).

—Personal Injury Claims.

Wife was unable to prove at trial that any payments from husband's annuities were for anything other than his personal injury claim, and he was found to be totally and permanently disabled; thus, the circuit court did not err in finding that the annuities were not divisible as marital property. Cherry v. Cherry, 2021 Ark. 49, 617 S.W.3d 692 (2021).

Unequal Division.

—In General.

Circuit court did not err in dividing the marital property unequally because it made the required acknowledgement of its unequal distribution of the property, and properly based the decision on the statutory factors. Neidhardt v. Neidhardt, 2020 Ark. App. 521 (2020).

CHAPTER 13

CHILD CUSTODY AND VISITATION

SUBCHAPTER.
1. General Provisions.

Subchapter 1 — General Provisions

SECTION.
9-13-101. Award of custody — Definition.

9-13-101. Award of custody — Definition.

(a)(1)(A)(i) In an action for divorce, the award of custody of a child of the marriage shall be made without regard to the sex of a parent but solely in accordance with the welfare and best interest of the child.

(ii) In determining the best interest of the child, the court may consider the preferences of the child if the child is of a sufficient age and mental capacity to reason, regardless of chronological age.

(iii) In an action for divorce, an award of joint custody is favored in Arkansas.

(iv)*(a)* In an action concerning an original child custody determination in a divorce or paternity matter, there is a rebuttable presumption that joint custody is in the best interest of the child.

(b) The presumption that joint custody is in the best interest of the child may be rebutted:

(1) If the court finds by clear and convincing evidence that joint custody is not in the best interest of the child;

(2) If the parties have reached an agreement on all issues related to custody of the child;

(3) If one (1) of the parties does not request sole, primary, or joint custody; or

(4) If a rebuttable presumption described in subsection (c) or subsection (d) of this section is established by the evidence.

(c) The circuit court may enter an order to reduce areas of conflict in a manner determined appropriate by the court.

(B) When a court order holds that it is in the best interest of a child to award custody to a grandparent, the award of custody shall be made without regard to the sex of the grandparent.

(2)(A) Upon petition by a grandparent who meets the requirements of subdivision (a)(2)(B)(i) or subdivision (a)(2)(B)(ii) of this section, a circuit court shall grant the grandparent a right to intervene pursuant to Rule 24(a) of the Arkansas Rules of Civil Procedure.

(B)(i) A grandparent shall be entitled to notice and shall be granted an opportunity to be heard in any child custody proceeding involving a grandchild who is twelve (12) months of age or younger when:

(a) The grandchild resided with the grandparent for at least six (6) continuous months prior to the grandchild's first birthday;

(b) The grandparent was the primary caregiver for and financial supporter of the grandchild during the time the grandchild resided with the grandparent; and

(c) The continuous custody occurred within one (1) year of the date the child custody proceeding was initiated.

(ii) A grandparent shall be entitled to notice and shall be granted an opportunity to be heard in any child custody proceeding involving a grandchild who is twelve (12) months of age or older when:

(a) The grandchild resided with this grandparent for at least one (1) continuous year regardless of age;

(b) The grandparent was the primary caregiver for and financial supporter of the grandchild during the time the grandchild resided with the grandparent; and

(c) The continuous custody occurred within one (1) year of the date the child custody proceeding was initiated.

(iii) Notice to a grandparent shall be given by the moving party.

(3) For purposes of this section, "grandparent" does not mean a parent of a putative father of a child.

(4)(A) The party that initiates a child custody proceeding shall notify the circuit court of the name and address of any grandparent who is entitled to notice under the provisions of subdivision (a)(2) of this section.

(B) The notice shall be in accordance with § 16-55-114.

(5) As used in this section, "joint custody" means the approximate and reasonable equal division of time with the child by both parents individually as agreed to by the parents or as ordered by the court.

(b)(1)(A)(i) When in the best interest of a child, custody shall be awarded in such a way so as to assure the frequent and continuing contact of the child with both parents consistent with subdivision (a)(1)(A) of this section.

(ii) To this effect, the circuit court shall consider awarding joint custody of a child to the parents in making an order for custody.

(iii) If, at any time, the circuit court finds by a preponderance of the evidence that one (1) parent demonstrates a pattern of willfully creating conflict in an attempt to disrupt a current or pending joint-custody arrangement and the circuit court is unable to enter an order that will reduce areas of conflict caused by the disruptive parent, the circuit court may deem such behavior as a material change of circumstances and may change a joint custody order to an order of primary custody to the nondisruptive parent.

(iv) If a modification of a child custody decree is based on the active duty status of a parent as a member of the United States Armed Forces deployed outside of the United States or the federal active duty status of a parent as a member of a state National Guard or reserve component:

(a) Any modification of the child custody decree shall:

(1) Be temporary; and

(2) Revert back to the previous child custody decree at the end of the deployment or federal active duty unless both parties consent to a modification that continues after the deployment or federal active duty; and

(b) The deployment or federal active duty status shall be considered the equivalent of daily parental presence and parental involvement with the child.

(v) Child support under a joint custody order is issued at the discretion of the court and shall:

(a) Be consistent with Supreme Court Administrative Order No. 10 — Arkansas Child Support Guidelines; or

(b) Deviate from Supreme Court Administrative Order No. 10 — Arkansas Child Support Guidelines as permitted by the rule.

(vi) A court shall consider the best interest of the child when making a child custody determination.

(vii)*(a)* A parent who is not granted sole, primary, or joint custody of his or her child is entitled to reasonable parenting time with the child unless the court finds after a hearing that parenting time between the parent and the child would seriously endanger the physical, mental, or emotional health of the child.

(b) At the request of a party, a court shall issue a written order that:

(1) Is specific as to the frequency, timing, duration, condition, and method of scheduling parenting time with a parent who is not granted sole, primary, or joint custody of his or her child; and

(2) Takes into consideration the developmental age of the child.

(B) If a grandparent meets the requirements of subdivision (a)(2)(B)(i) or subdivision (a)(2)(B)(ii) of this section and is a party to the proceedings, the circuit court may consider the continuing contact between the child and a grandparent who is a party, and the circuit court may consider orders to assure the continuing contact between the grandparent and the child.

(2) To this effect, in making an order for custody, the court may consider, among other facts, which party is more likely to allow the child or children frequent and continuing contact with the noncustodial parent and the noncustodial grandparent who meets the requirements of subdivision (a)(2)(B)(i) or subdivision (a)(2)(B)(ii) of this section.

(3) After a hearing on the merits of a child custody action, if a court determines that the presumption in subdivision (a)(1)(A)(iv)*(a)* of this section is rebutted, the court shall enter a written order that includes the following:

(A) Facts, findings, and conclusions of law concerning the basis for the court's determination; and

(B) A parenting time schedule that:

(i) Maximizes the amount of time that each parent has with the child; and

(ii) Is consistent with the best interest of the child.

(c)(1) If a party to an action concerning custody of or a right to visitation with a child has committed an act of domestic violence against the party making the allegation or a family or household member of either party and such allegations are proven by a preponderance of the evidence, the circuit court must consider the effect of such domestic violence upon the best interests of the child, whether or not the child was physically injured or personally witnessed the abuse, together with such facts and circumstances as the circuit court deems relevant in making a directive pursuant to this section.

(2) There is a rebuttable presumption that it is not in the best interest of the child to be placed in the custody of an abusive parent in cases in which there is a finding by a preponderance of the evidence that the parent has engaged in a pattern of domestic abuse.

(d)(1) If a party to an action concerning custody of or a right to visitation with a child is a sex offender who is required to register under the Sex Offender Registration Act of 1997, § 12-12-901 et seq., the circuit court may not award custody or unsupervised visitation of the child to the sex offender unless the circuit court makes a specific finding that the sex offender poses no danger to the child.

(2) There is a rebuttable presumption that it is not in the best interest of the child to be placed in the care or custody of a sex offender or to have unsupervised visitation with a sex offender.

(3) There is a rebuttable presumption that it is not in the best interest of the child to be placed in the home of a sex offender or to have unsupervised visitation in a home in which a sex offender resides.

(e)(1) The Director of the Administrative Office of the Courts is authorized to establish an attorney ad litem program to represent children in circuit court cases in which custody is an issue.

(2) When a circuit judge determines that the appointment of an attorney ad litem would facilitate a case in which custody is an issue and further protect the rights of the child, the circuit judge may appoint a private attorney to represent the child.

(3)(A) The Supreme Court, with the advice of the circuit judges, shall adopt standards of practice and qualifications for service for attorneys who seek to be appointed to provide legal representation for children in custody cases.

(B)(i) In extraordinary cases, the circuit court may appoint an attorney ad litem who does not meet the required standards and qualifications.

(ii) The attorney may not be appointed in subsequent cases until he or she has made efforts to meet the standards and qualifications.

(4) When attorneys are appointed pursuant to subdivision (e)(2) of this section, the fees for services and reimbursable expenses shall be paid from funds appropriated for that purpose to the Administrative Office of the Courts.

(5)(A) When a circuit judge orders the payment of funds for the fees and expenses authorized by this section, the circuit judge shall transmit a copy of the order to the office, which is authorized to pay the funds.

(B) The circuit court may also require the parties to pay all or a portion of the expenses, depending on the ability of the parties to pay.

(6) The office shall establish guidelines to provide a maximum amount of expenses and fees per hour and per case that will be paid pursuant to this section.

(7) In order to ensure that each judicial district will have an appropriate amount of funds to utilize for ad litem representation in custody cases, the funds appropriated shall be apportioned based upon a formula developed by the office and approved by the Arkansas Judicial Council, Inc. and the Administrative Rules Subcommittee of the Legislative Council.

(8)(A) The office shall develop a statistical survey that each attorney who serves as an ad litem shall complete upon the conclusion of the case.

(B) Statistics shall include the ages of children served, whether the custody issue arises at a divorce or post-divorce stage, whether psychological services were ordered, and any other relevant information.

History. Acts 1979, No. 278, § 1; A.S.A. 1947, § 34-2726; Acts 1997, No. 905, § 1; 1997, No. 1328 § 1; 1999, No. 708, § 2; 2001, No. 1235, § 1; 2001, No. 1497, § 1; 2003, No. 92, § 1; 2005, No. 80, § 1; 2007, No. 56, § 1; 2011, No. 344, § 2; 2013, No. 1156, §§ 1-3; 2019, No. 315, § 713; 2019, No. 906, § 1; 2021, No. 604, §§ 1-4.

Amendments. The 2021 amendment added (a)(1)(A)(iv); substituted “shall” for “may” in (b)(1)(A)(ii); inserted “and the circuit court is unable to enter an order that will reduce areas of conflict caused by the disruptive parent” in (b)(1)(A)(iii); and added (b)(1)(A)(vi), (b)(1)(A)(vii), and (b)(3).

CASE NOTES

ANALYSIS

Applicability.
Child’s Best Interest.
Joint Custody.
Modification.

Applicability.

Subdivision (b)(1)(A)(iii) of this section, concerning disruption of a joint-custody arrangment by one parent, did not apply in this case where the parties shared only joint legal custody. Eversole v. Eversole, 2021 Ark. App. 114 (2021).

Child’s Best Interest.

Trial court properly denied a father’s motion to modify custody of his child because there was no dispute that the move to the county where the father lived was in the child’s best interest, the trial court applied the correct analysis in finding that the mother’s relocation was a change, but that it was not a change sufficiently material to warrant modifying custody, the possibility of joint custody was not a new circumstance, and the mother should not risk losing sole custody of the child when she moved closer in proximity to the father. Ingle v. Dacus, 2020 Ark. App. 490, 611 S.W.3d 714 (2020).

Joint Custody.

Awarding joint custody was not error given the parties’ conflicting testimony and that the discord between the parties was far less than in other cases awarding joint custody. Chandler v. Chandler, 2021 Ark. App. 42, 616 S.W.3d 279 (2021).

Modification.

Circuit court did not err in finding that a material change in circumstances had taken place after the agreed child custody order and that it was in the child's best interest for the father to have full physical and legal custody of the child because the mother became unwilling to facilitate visitation with the father when he returned from his deployment; she exclusively blamed the father for the child's behavior; the mother's life partner stated that she had placed handcuffs on the five-year-old child; and, although the mother agreed that handcuffing the child was inappropriate, she argued that it was reasonable for her partner to discipline the child in some manner for her suspension from school. Faulkner v. McCain, 2020 Ark. App. 541, 613 S.W.3d 746 (2020).

CHAPTER 14

SPOUSAL AND CHILD SUPPORT

SUBCHAPTER.
1. General Provisions.
2. Enforcement Generally.
4. State Commission on Child Support.
5. Healthcare Coverage.

Subchapter 1 — General Provisions

SECTION.
9-14-105. Petition for support — Definitions.
9-14-106. Parents — Amount of support — Definition.
9-14-107. Change in income warranting modification — Definition.

9-14-105. Petition for support — Definitions.

(a) The circuit courts in the several counties in this state shall have exclusive jurisdiction in all civil cases and matters relating to the support of a minor child or support owed to a person eighteen (18) or older that accrued during that person's minority.

(b) The following may file a petition to require the parent or parents of a minor child to provide support for the minor child:

(1) Any parent having physical custody of a minor child;

(2) Any other person or agency to whom physical custody of a minor child has been given or relinquished;

(3) A minor child by and through his or her guardian or fictive kin; or

(4) The Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration when a person to whom physical custody has been relinquished or awarded, parent, or putative father:

(A) Is receiving assistance under the Transitional Employment Assistance Program, Medicaid, the Supplemental Nutrition Assistance Program, or the Foster Care Program of Title IV-E of the Social Security Act, 42 U.S.C. § 670 et seq.;

(B) Is receiving child support services under 45 C.F.R. § 302.33, as it existed on January 1, 2021; or

(C) Has contracted with the Department of Finance and Administration for child support services.

(c) Any person eighteen (18) years of age or above to whom support was owed during his or her minority may file a petition for a judgment against the nonsupporting parent or parents. Upon hearing, a judgment may be entered upon proof by a preponderance of the evidence for the amount of support owed and unpaid.

(d) As used in this subchapter:

(1) "Minor child" means a child less than eighteen (18) years of age; and

(2) "Payor parent" means a parent with an obligation to pay support.

(e) Any action filed pursuant to this subchapter may be brought at any time up to and including five (5) years from the date the child reaches eighteen (18) years of age.

(f) This section shall apply to all actions pending as of March 29, 1991, and filed thereafter and shall retroactively apply to all child support orders now existing.

History. Acts 1989, No. 383, § 1; 1991, No. 870, § 1; 1993, No. 1242, § 1; 1995, No. 1184, § 6; 2015, No. 565, § 1; 2021, No. 927, §§ 1, 2.

Amendments. The 2021 amendment deleted "noncustodial" preceding "parent or parents" in the introductory language of (b); substituted "fictive kin" for "next friend" in (b)(3); subdivided (b)(4); in the introductory language of (b)(4), substituted "a person to whom physical custody has been relinquished or awarded, parent, or putative father" for "the parent or person to whom physical custody has been relinquished or awarded"; rewrote (b)(4)(A); inserted (b)(4)(B); substituted "child support services" for "the collection of child support" in (b)(4)(C); and rewrote (d)(2).

CASE NOTES

Standing.

Pursuant to a plain reading of § 9-10-104(3) and subsection (c) of this section, the daughter, now an adult, was authorized to pursue both the establishment of paternity and child support when the trial court made her a party in the case where the father made no showing as to why those statutes did not compel her participation as a party. Frazier v. Office of Child Support Enf't, 2021 Ark. App. 65, 618 S.W.3d 415 (2021).

9-14-106. Parents — Amount of support — Definition.

(a)(1)(A) In determining a reasonable amount of support initially or upon review to be paid by a parent, the court shall refer to the most recent revision of the family support chart.

(B) It shall be a rebuttable presumption for the award of child support that the amount contained in the family support chart is the correct amount of child support to be awarded.

(C) Only upon a written finding that the application of the family support chart would be unjust or inappropriate as determined under established criteria set forth in the family support chart shall the presumption be rebutted.

(D)(i) The incarceration of a parent shall not be treated as voluntary unemployment for purposes of determining a reasonable amount of support either initially or upon review.

(ii) As used in subdivision (a)(1)(D)(i) of this section, "incarceration" means a conviction that results in a sentence of confinement to a local jail, state or federal correctional facility, or state psychiatric hospital for at least one hundred eighty (180) days, excluding credit for time served before sentencing.

(2)(A) The court may provide for a partial abatement or reduction of the stated child support amount for any period of extended visitation with the payor parent.

(B) The court shall consider whether an adjustment in child support is appropriate, giving consideration to the fixed obligations of the physical custodian or payee parent that are attributable to the minor child, to the increased costs of the payor parent associated with the minor child's visit, and to the relative incomes of both parents.

(C) Abatement or reduction of the family support chart amount and justification of the abatement or reduction shall be clearly set forth in the written findings of the court.

(D)(i) The payor parent shall provide written notification within ten (10) days, when abatement or reduction of child support should occur due to extended visitation, to the clerk of the court responsible for receipt of the child support payment, the payor parent's employer, if income withholding is in effect, and the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration when applicable.

(ii) It is the responsibility of the payor parent to notify the clerk of the court responsible for receipt of the child support payment, the payor parent's employer, if income withholding is in effect, and the office, when applicable, when abatement or reduction should stop and payment of child support should resume.

(E) If the payor parent fails to exercise extended visitation periods, the child support shall not be abated or reduced.

(b) Subsequent to the finding by the court that the payor parent should be ordered to pay support for the minor child, the court shall follow the same procedure and requirements as set forth in the laws of this state applicable to child support orders and judgments entered by the circuit courts in cases involving separation or divorce of the parents of the minor child.

History. Acts 1989, No. 383, § 1; 1993, No. 607, § 1; 1995, No. 1184, § 7; 1997, No. 1296, § 12; 2019, No. 904, § 3; 2021, No. 927, § 3.

Amendments. The 2021 amendment substituted "Parents" for "Noncustodial parents" in the section heading; substituted "a parent" for "the noncustodial parent or parents" in (a)(1)(A); substituted "payor parent" for "noncustodial parent" throughout (a)(2); in (a)(2)(B), substituted "physical custodian or payee parent" for "custodial parent" and inserted "minor" twice; inserted "family support" in (a)(2)(C); in (b), substituted "payor parent" for "defendant" and inserted "minor"; and made a stylistic change.

9-14-107. Change in income warranting modification — Definition.

(a)(1) A change in the gross income of the payor or payee parent in an amount equal to or more than twenty percent (20%) shall constitute a material change of circumstances sufficient to petition the court for modification of child support.

(2)(A)(i) Any time a court orders child support, the court shall order each parent to provide proof of income for the previous calendar year to:

(a)(1) The other parent or the physical custodian of the minor child.

(2) The court shall also order each parent to provide proof of income for a previous calendar year whenever requested in writing by certified mail by the other parent or physical custodian of the minor child, but not more than one (1) time a year; and

(b) The Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration, when applicable.

(ii) Whenever a parent or the physical custodian of the minor child requests proof of income in writing, the parent receiving the request shall respond by certified mail within fifteen (15) days.

(B) If the parent receiving the request fails to provide proof of income as directed by the court or fails to respond to a written request for proof of income, the parent receiving the request may be subject to contempt of court.

(C) If a parent requesting information or the office has to petition the court to obtain the information, the parent requesting information or the office may be entitled to recover costs and a reasonable attorney's fee.

(D) Once notified of a material change in circumstances sufficient to petition for modification and when applicable, the office shall file a motion within thirty (30) days for modification of child support.

(E)(i) All income information received by the office shall be used only as permitted and required by law.

(ii) All income information received by a parent or the physical custodian of the minor child shall be treated confidentially and used for child support purposes only.

(3)(A) The incarceration of a parent shall not be treated as voluntary unemployment for purposes of determining a reasonable amount of support either initially or upon review.

(B) As used in subdivision (a)(3)(A) of this section, "incarceration" means a conviction that results in a sentence of confinement to a local jail, state or federal correctional facility, or state psychiatric hospital for at least one hundred eighty (180) days, excluding credit for time served before sentencing.

(b) A change in a parent's ability to provide health insurance may constitute a material change of circumstances sufficient to petition the court for modification of child support according to the family support chart.

(c)(1) The office shall, at least one (1) time every three (3) years, without regard to a material change of circumstances, review cases in its enforcement caseload in which there has been an assignment under Title IV-A of the Social Security Act or upon the request of either parent or the physical custodian of the minor child and petition for adjustment if appropriate.

(2) An inconsistency between the existing child support award and the amount of child support that results from application of the family support chart shall constitute a material change of circumstances sufficient to petition the court for modification of child support according to the family support chart after appropriate deductions unless:

(A) The inconsistency does not meet a reasonable quantitative standard established by the State of Arkansas in accordance with subsection (a) of this section;

(B) The inconsistency is due to the fact that the amount of the current child support award resulted from a rebuttal of the guideline amount and there has not been a change of circumstances that resulted in the rebuttal of the guideline amount; or

(C) The inconsistency is due solely to a revision of the family support chart.

(d) Any modification of a child support order shall be effective as of the date of service on the other party of the file-marked notice of a motion for increase or decrease in child support unless otherwise ordered by the court.

(e) When a person is ordered by a court of record to pay for the support of his or her minor child, the court, at the time an order of support is made or any time thereafter, upon a showing of good cause, may order periodic drafts of his or her accounts at a financial institution to deduct moneys due or payable for child support in amounts the court may find to be necessary to comply with its order for the support of the minor child.

History. Acts 1991, No. 367, §§ 1, 2; 1993, No. 1242, § 12; 1995, No. 1184, § 39; 1997, No. 1296, § 15; 2001, No. 1248, § 4; 2003, No. 337, § 1; 2005, No. 1962, § 19; 2007, No. 713, § 1; 2009, No. 551, §§ 1, 2; 2015, No. 565, § 2; 2019, No. 904, §§ 4, 5; 2021, No. 927, § 4.

Amendments. The 2021 amendment deleted "payor" preceding "income" in the section heading; rewrote (a)(1) and (a)(2); inserted "or the physical custodian of the minor child" in (c)(1); in (d), deleted "that is based on a change in gross income of the noncustodial parent" preceding "shall" and substituted "service on the other party of the file-marked notice of" for "filing"; substituted "minor child" for "children" twice in (e); and made stylistic changes.

CASE NOTES

Change of Circumstances Found.

Trial court clearly erred in not finding a material change in circumstances when an increase in the father's monthly VA benefits from the entry of the prior child support order to the 2019 hearing and subsequent order far exceeded $100. State Office of Child Support Enf't v. Wells, 2020 Ark. App. 512, 612 S.W.3d 761 (2020).

SUBCHAPTER 2 — ENFORCEMENT GENERALLY

SECTION.
9-14-201. Definitions.
9-14-205. Information required in support cases.
9-14-208. Office of Child Support Enforcement — Powers to obtain information — Penalty — Immunity — Definitions.
9-14-210. Office of Child Support Enforcement — Employment of attorneys — Real party in interest — Scope of representation.
9-14-211. Assigned support rights generally.
9-14-213. Assigned support rights — Notice — Termination of assignment.
9-14-237. Expiration of child support obligation.

9-14-201. Definitions.

As used in this Code:

(1)(A) "Accrued arrearage" means a delinquency that is past due and unpaid and owed under a court order or an order of an administrative process established under state law for support of any child or children.

(B) "Accrued arrearage" may include past due support that has been reduced to a judgment if the support obligation under the order has not been terminated;

(2) "Child support order" or "support order" means a judgment, decree, or order, whether temporary, final, or subject to modification, issued by a court or an administrative agency of competent jurisdiction for the support and maintenance of a child, including a child who has attained the age of majority under the law of the issuing state, or of the parent with whom the child is living, that provides for monetary support, health care, including health insurance or cash medical support, arrearages, or reimbursement, and that may include related costs and fees, interest and penalties, income withholding, attorney's fees, and other relief;

(3) "Court or its representative" means the circuit court of this state or a similar district court of another state when the context so requires, a court official of the circuit court, or the state or local child support enforcement attorney operating pursuant to an agreement with the court in cases related to Title IV-D of the Social Security Act;

(4)(A) "Income" means any periodic form of payment due to an individual, regardless of the source, including wages, salaries, commissions, bonuses, workers' compensation, disability, payments pursuant to a pension or retirement program, and interest.

(B) The definition of "income" may be expanded by the Supreme Court from time to time in Supreme Court Administrative Order Number 10 — Arkansas Child Support Guidelines;

(5) "Lump-sum payment" means any:

(A) Form of income paid to an individual at other than regular or periodic intervals; or

(B) Payment regardless of frequency that is dependent upon meeting a condition precedent, including without limitation:

(i) The performance of a contract;

(ii) A job performance standard or quota;

(iii) The liquidation of unused sick or vacation pay or leave;

(iv) The settlement of a claim; or

(v) An award for length of service;

(6) "Net lump-sum payment" means the entire lump-sum payment less any amount required by law to be withheld;

(7) "Noncustodial parent" means a natural or adoptive parent who does not reside with his or her dependent child;

(8) "Notice" means any form of service authorized under Arkansas law or laws of the state in which the individual is served;

(9) "Overdue support" means a delinquency pursuant to an obligation created under a court decree, order, or judgment or an order of an administrative process established under the laws of another state for the support and maintenance of a minor child;

(10) "Past due support" means the total amount of support determined under a court order established under state law, that remains unpaid;

(11) "Payee parent" means a parent or physical custodian of a child to whom support is owed;

(12)(A) "Payor" means an employer, person, general contractor, independent contractor, subcontractor, or legal entity that has or may have in the future in its possession moneys, income, periodic earnings, or a lump-sum payment due the noncustodial parent.

(B) "Payor" shall include all agencies, boards, commissions, institutions, and other instrumentalities of the United States Government and the State of Arkansas and all cities of the first class, cities of the second class, incorporated towns, and counties and their agencies, boards, commissions, institutions and other instrumentalities, and school districts; and

(13) "Payor parent" means a parent with an obligation to pay support.

History. Acts 1985, No. 989, § 6; A.S.A. 1947, § 34-1224; Acts 1987, No. 719, § 1; 1997, No. 1296, § 16; 1999, No. 1514, § 7; 2007, No. 713, § 2; 2009, No. 551, § 3; 2021, No. 927, §§ 5, 6.

Amendments. The 2021 amendment, in (8), deleted "personal" preceding "service" and added "or laws of the state in which the individual is served"; and added the definitions for "Payee parent" and "Payor parent".

9-14-205. Information required in support cases.

(a) In all cases in which the support and care of any child or children are involved, it shall be the duty of the plaintiff, defendant, payee parent or physical custodian of the child, and the payor parent to keep the clerk of the circuit court informed of his or her current address when a payment of support is directed to be paid through the registry of the court or to keep the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration informed of his or her current address when a payment of support is directed to be paid through the Arkansas Child Support Clearinghouse.

(b)(1) The payor parent and the payee parent or physical custodian of the child in any case in which the support and care of any child or children are involved shall file with the clerk of the circuit court and the Office of Child Support Enforcement and update, as appropriate, his or her name, Social Security number, residential and mailing address, telephone number, driver's license number, and employer's name and address.

(2)(A) Information required pursuant to subdivision (b)(1) of this section shall be filed on a form provided by the Administrative Office of the Courts for that purpose.

(B) Forms filed with the clerk pursuant to subdivision (b)(1) of this section shall be:

(i) Maintained separately from the file of the case in which the support and care of any child or children are involved; and

(ii) Considered confidential and shall be open to inspection only by the following persons or entities:

(a) The Office of Child Support Enforcement;

(b) Attorneys of record for any party to the case, including, but not limited to, parties appearing pro se; and

(c) Any person or entity authorized by the circuit court in which the form is filed.

(c) In any subsequent child support enforcement action between the parties, upon sufficient showing that diligent effort has been made to ascertain the location of such a party, the circuit court shall deem that state due process requirements for notice and service of process have been met with respect to the party upon delivery of written notice to the most recent residential address or employer address filed with the clerk of the circuit court pursuant to this subsection.

History. Acts 1985, No. 989, § 5; 1986 (2nd Ex. Sess.), No. 21, § 1; A.S.A. 1947, § 34-1223; Acts 1997, No. 1296, § 18; 1999, No. 1514, § 8; 2005, No. 1877, § 1; 2021, No. 927, §§ 7, 8.

Amendments. The 2021 amendment, in (a), substituted "payee parent" for "custodial parent" and "payor parent" for "noncustodial parent"; substituted "The payor parent and the payee parent or physical custodian of the child in" for "Each party to" in (b)(1); and made stylistic changes.

9-14-208. Office of Child Support Enforcement — Powers to obtain information — Penalty — Immunity — Definitions.

(a) As used in this section:

(1) "Business" means any corporation, partnership, cable television company, association, individual, utility company that is organized privately, as a cooperative, or as a quasi-public entity, or labor or other

organization maintaining an office, doing business, or having a registered agent in the State of Arkansas;

(2) "Financial entity" means any bank, trust company, savings and loan association, credit union, insurance company, or any corporation, association, partnership, or individual receiving or accepting money or its equivalent on deposit as a business in the State of Arkansas;

(3) "Information" includes without limitation the following:

(A) The full name of a parent;

(B) The Social Security number of a parent;

(C) The date of birth of a parent;

(D) The last known mailing and residential address of a parent;

(E) The amount of wages, salaries, earnings, or commissions earned by or paid to a parent;

(F) The number of dependents declared by a parent on state and federal tax information and reporting forms;

(G) The name of the company, policy numbers, and dependent coverage for any medical insurance carried by and on behalf of a parent;

(H) The name of the company, policy numbers, and the cash values, if any, of any life insurance policies or annuity contracts that are carried by or on behalf of or owned by a parent; and

(I) Any retirement benefits, pension plans, or stock purchase plans maintained on behalf of or owned by a parent and the value of the retirement benefit, pension plan, or stock purchase plan, employee contributions to the retirement benefit, pension plan, or stock purchase plan, and the extent to which each retirement benefit, pension plan, or stock purchase plan is vested;

(4) "Office of Child Support Enforcement" means the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration or a local child support enforcement unit contracting under § 9-14-207 to establish and enforce support obligations;

(5) "Parent" means a natural or adoptive parent, including a putative father, for or against whom the Office of Child Support Enforcement is enforcing or seeking to enforce a support obligation pursuant to a plan described in Title IV-D of the Social Security Act; and

(6) "State or local government agency" means any department, board, bureau, commission, office, or other agency of this state or any local unit of government of this state.

(b)(1) For the purpose of locating and determining resources of either parent, the Office of Child Support Enforcement may request and receive information from the Federal Parent Locator Service, from available records in other states, territories, and the District of Columbia, from the records of all state or local government agencies, and from businesses and financial entities.

(2) The Administrator of the Office of Child Support Enforcement may enter into cooperative agreements with other state or local government agencies, businesses, or financial entities to provide direct

online access to data information terminals, computers, or other electronic information systems.

(3) State or local government agencies, businesses, and financial entities shall provide information if known or chronicled in their business records, notwithstanding any other provision of law making the information confidential.

(4)(A) In addition, the Office of Child Support Enforcement, pursuant to an agreement with the United States Secretary of Health and Human Services, or his or her designee, may request and receive from the Federal Parent Locator Service information authorized under 42 U.S.C. § 653, for the purpose of determining the whereabouts of any parent or child.

(B) The information described in subdivision (b)(4)(A) of this section may be requested and received when it is to be used to locate the parent or child for the purpose of enforcing any state or federal law with respect to the unlawful taking or restraining of a child or for the purpose of making or enforcing a child custody determination.

(c)(1) Any business or financial entity that has received a request as provided by subsection (b) of this section from the Office of Child Support Enforcement or from a child support enforcement program administered by any other state under Title IV-D of the Social Security Act shall further cooperate with the Office of Child Support Enforcement or a requesting state in discovering, retrieving, and transmitting information contained in the business records that would be useful in locating parents or in establishing or enforcing child support orders and shall provide the requested information or a statement that any or all of the requested information is not known or available to the business or financial entity.

(2) The business or financial entity shall provide the requested information or the statement under subdivision (c)(1) of this section within thirty (30) days of receipt of the request, or the business or financial entity shall be liable for civil penalties of up to one hundred dollars ($100) for each day after the thirty-day period in which the business or financial entity fails to provide the information requested.

(d) Any business or financial entity, or any officer, agent, or employee of a business or financial entity, participating in good faith and providing information requested under this section, shall be immune from liability and suit for damages that might otherwise result from the release of the information to the Office of Child Support Enforcement or to a child support enforcement program administered by a requesting state.

(e)(1) Each financial entity shall cooperate with the Office of Child Support Enforcement to develop, implement, and operate an electronic automated data match system, using automated data exchanges to the maximum extent feasible, in which each financial entity shall provide to the Office of Child Support Enforcement per calendar quarter the name, record address, Social Security number or other taxpayer identification number, and other identifying information for each payor parent who maintains an account at the financial entity and who owes past-due child support, as identified by the Office of Child Support Enforcement by name and Social Security number or other taxpayer identification number.

(2) For purposes of this subsection, the term "account" means a demand deposit account, checking or negotiable withdrawal order account, savings account, time deposit account, or money market mutual fund account.

(3) The Office of Child Support Enforcement is authorized to pay a reasonable fee to a financial entity for conducting an automated data match, not to exceed the actual costs incurred by the financial entity.

(f) Pursuant to subsection (e) of this section, each financial entity, in response to a notice of lien or levy, shall encumber or surrender assets held by the financial entity on behalf of any payor parent who is subject to a child support lien pursuant to judgment or by operation of law.

(g) In cases in which there is overdue child support and in an effort to seize assets to satisfy any current support obligation and the arrearage, the Office of Child Support Enforcement is authorized to:

(1) Intercept or seize periodic or lump-sum payments from:

(A) A state or local government agency, including unemployment compensation, workers' compensation, or other benefits; and

(B) Judgments, settlements, prizes, and lotteries for the full amount of the current support obligation and arrearage owed or the net lump-sum payment, whichever is less;

(2) Attach and seize assets of the payor parent held in financial institutions;

(3) Attach public and private retirement funds, including any union retirement fund and railroad retirement; and

(4) Impose liens in accordance with subsection (f) of this section and, in appropriate cases, to force sale of property and distribution of proceeds.

(h)(1) The withholdings, intercepts, and seizures as set out in subsection (g) of this section may be initiated by the Office of Child Support Enforcement without obtaining a prior order from any court but shall be carried out in full compliance with published administrative procedures, including due process safeguards, promulgated by the Office of Child Support Enforcement.

(2)(A) The rules shall require written notice to each parent and payor parent to whom this section applies:

(i) That the withholding, intercept, or seizure has commenced; and

(ii) Of the right to an administrative hearing and the procedures to follow if the parent or payor parent desires to contest the withholding, intercept, or seizure on the grounds that the withholding, intercept, or seizure is improper due to a mistake of fact.

(B) The notice to the parent and payor parent pursuant to subdivision (h)(2)(A) of this section shall include the information provided to the employer, agency, or financial entity under subsection (e) of this section.

(i) Any financial entity, or any officer, agent, or employee of a financial entity, participating in good faith and providing information requested pursuant to subsection (e) of this section or encumbering or surrendering assets pursuant to subsection (f) or subsection (g) of this section, shall be immune from liability and suit for damages that might otherwise result from the release of the information or the encumbering or surrendering of the assets to the Office of Child Support Enforcement.

(j) Any information obtained under the provisions of this section shall become a business record of the Office of Child Support Enforcement, subject to the privacy safeguards set out in § 9-14-210(g)-(l).

History. Acts 1985, No. 989, § 25; A.S.A. 1947, § 34-1243; Acts 1991, No. 542, § 3; 1993, No. 928, § 1; 1993, No. 964, § 1; 1995, No. 1184, § 8; 1997, No. 1296, § 21; 1999, No. 1514, § 9; 2001, No. 1248, §§ 6, 7; 2009, No. 551, § 4; 2019, No. 315, § 714; 2021, No. 927, § 9.

Amendments. The 2021 amendment deleted "on noncustodial parent" following "information" in the section heading; substituted "includes with limitation" for "means, but is not necessarily limited to" in the introductory language of (a)(3); substituted "a parent" for "the noncustodial parent" throughout (a)(3); rewrote (a)(3)(I); substituted "'Parent'" for "'Noncustodial parent'" in the defined term in (a) and in that definition substituted "for or against" for "who does not reside with his or her dependent child and against"; substituted "either parent" for "noncustodial parents" in (b)(1); inserted "or local government" in (b)(1) and (2); added the designations within (b)(4) and (c); in (c)(1), deleted "absent" preceding "parents" and deleted "on absent parents" following "orders"; rewrote (c)(2); substituted "payor parent" for "noncustodial parent" in (e)(1), (f), and throughout (h)(2); inserted "government" in (g)(1)(A); added "for the full amount of the current support obligation and arrearage owed or the net lump-sum payment, whichever is less" in (g)(1)(B); substituted "payor parent" for "obligated parent" in (g)(2); and made stylistic changes.

9-14-210. Office of Child Support Enforcement — Employment of attorneys — Real party in interest — Scope of representation.

(a) The Department of Human Services or the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration, or both, shall employ attorneys to assist in the establishment and enforcement of support orders in the State of Arkansas.

(b) An attorney employed by the Department of Human Services or the office, or both, or employed by a county, prosecuting attorney, or local child support enforcement unit pursuant to a cooperative agreement with the office shall undertake representation of the action instead of the prosecuting attorney in actions brought pursuant to Title IV-D of the Social Security Act, 42 U.S.C. § 651 et seq., under the Uniform Interstate Family Support Act, § 9-17-101 et seq.

(c) An attorney employed under this subchapter, whether directly or by contract with the office, may be designated a special deputy prosecutor by the prosecuting attorney of that judicial district, for the limited purposes of prosecuting in a court of competent jurisdiction actions brought under § 5-26-401 or § 5-54-102, in those cases proceeding under Title IV-D of the Social Security Act, 42 U.S.C. § 651 et seq.

However, nothing in this section shall be construed to entitle such attorneys to those rights, benefits, or privileges that accrue to a prosecuting attorney under any other provision of state law, except as set forth below:

(1)(A) As a special deputy prosecutor, the attorney shall have the power to issue subpoenas in all matters being investigated by the office under § 5-26-401 or § 5-54-102 and may administer oaths for taking the testimony of witnesses subpoenaed before him or her.

(B) Such oaths shall have the same effect as if administered by the foreperson of a grand jury.

(C) The subpoena shall be substantially in the form set forth in § 16-43-212;

(2)(A) Appointment as a special deputy prosecutor shall not entitle the attorney to receive any additional fees or salary from the state for services provided pursuant to the appointment.

(B) Expenses of the special deputy prosecutor and any fees and costs incurred thereby in the prosecution of cases under § 5-26-401 or § 5-54-102 shall be the responsibility of the office under the Title IV-D program;

(3) A special deputy prosecutor appointed and functioning as authorized under this section shall be entitled to the same immunity granted by law to the prosecuting attorney; and

(4) The prosecuting attorney may revoke the appointment of a special deputy prosecutor at any time.

(d) The State of Arkansas is the real party in interest for purposes of establishing paternity, child support obligations, securing repayment of past-due support, and costs in actions brought to establish, modify, or enforce an order of support in any of the following circumstances:

(1) Whenever a parent, putative father, or person to whom physical custody of a child has been relinquished or awarded is receiving assistance under the Transitional Employment Assistance Program, Medicaid, the Supplemental Nutrition Assistance Program, or the Foster Care Program of Title IV-E of the Social Security Act, 42 U.S.C. § 670 et seq., and cooperation with child support services is required or when child support services continue to be provided under 45 C.F.R. § 302.33 as it existed on January 1, 2021;

(2) Whenever a contract for child support services has been entered into for the establishment or enforcement of a child support obligation;

(3) Whenever duties are imposed on the state in Title IV-D cases pursuant to the Uniform Interstate Family Support Act, § 9-17-101 et seq.; or

(4) When a child is placed in the custody of the Department of Human Services and rights have been assigned under § 9-14-109.

(e)(1) In any action brought to establish paternity or to establish, enforce, or modify a child support obligation, the Department of Human Services or the office, or both, or their contractors, may employ attorneys.

(2) An attorney employed under subdivision (e)(1) of this section shall represent the interests of the Department of Human Services or

the office and does not represent the assignor of an interest set out in subsection (d) of this section.

(3) Representation by the employed attorney shall not be construed as creating an attorney-client relationship between the attorney and the assignor of an interest set forth in subsection (d) of this section, or with any party or witness to the action, other than the Department of Human Services or the office, regardless of the name in which the action is brought.

(f)(1) In any action brought by the Department of Human Services or the office, or both, or their contractors, to establish paternity or to establish, enforce, or modify a child support obligation, if another party pleads a claim relating to child custody or visitation, property division, divorce, or other claims not directly related to support, the office shall advise the parent receiving child support services, as set forth in subsection (d) of this section, of the need for separate legal counsel.

(2) However, for the benefit of the court clerk, in any action brought by the Department of Human Services or the office, or both, or their contractors, pursuant to subsection (d) of this section, the name of the payee parent or physical custodian of the child shall be set out in the body of any petition filed and order entered in the matter.

(g) It shall be unlawful for any person to use or disclose information concerning applicants for, or recipients of, child support enforcement services provided by the office under Title IV-D of the Social Security Act, 42 U.S.C. § 651 et seq., except for purposes in furtherance of child support activities, including the following:

(1) Administration of the state plan for child support enforcement required under Title IV-D of the Social Security Act, 42 U.S.C. § 651 et seq., or administration of the Title IV-D program;

(2) Any investigation, prosecution, or criminal or civil proceeding conducted in connection with the administration of any plan or program listed in subdivision (g)(1) of this section;

(3) Administration of any federal program that provides assistance, in cash or in kind, or services directly to individuals based on need;

(4) A report to the appropriate agency or official of information on known or suspected instances of physical or mental injury, sexual abuse or exploitation, or negligent treatment or maltreatment of a child who is the subject of a child support enforcement service when circumstances indicate that the child's health or welfare is threatened; and

(5) When authorized in writing by the custodial or noncustodial parent, child support payment records for use by attorneys and abstractors to facilitate the release or satisfaction of child support liens on real property.

(h) The office may release information on the whereabouts of a party under the following conditions:

(1) The party requesting the information is the noncustodial parent or the physical custodian who submits the request by affidavit that clearly states the reason the information is requested, and that sets out the unsuccessful attempts to acquire the information from other sources;

(2) The party requesting the information shall submit the affidavit requesting the release of information to the office by first class mail; and

(3) Within seven (7) days of receiving the request, the office shall notify the party whose whereabouts are subject to disclosure that a request for location information has been made and that the requested information will be provided within twenty (20) days of the date of the notice unless the office receives a copy of a court order that enjoins the disclosure or otherwise restricts the requesting party's rights to contact or visit the party or the children, or the party requests an administrative hearing to contest the disclosure.

(i)(1) Whenever an administrative hearing is requested, the office shall not disclose the whereabouts of a party until the administrative hearing is held or completed.

(2) If any reasonable evidence of domestic violence or child abuse is presented at the administrative hearing or by affidavit and the disclosure of the last known address or any identifying information could be harmful to a party or the child, the office shall not release the information.

(j) It shall be unlawful to disclose to any committee or legislative body any information that identifies by name or address any applicant or recipient of Title IV-D child support enforcement services.

(k) A release of information on the whereabouts of a party made in compliance with § 9-14-205 is a permissible release of information in connection with the administration of the Title IV-D program.

(l) A release of payment information made in compliance with § 9-14-807 is a permissible release of information in connection with the administration of the Title IV-D program.

(m) A violation of subsection (g), subsection (h), subsection (i), subsection (j), subsection (k), or subsection (l) of this section shall constitute a Class B misdemeanor.

History. Acts 1985, No. 989, § 26; A.S.A. 1947, § 34-1244; Acts 1993, No. 468, § 2; 1993, No. 927, § 1; 1995, No. 1181, § 1; 1995, No. 1184, §§ 10, 27; 1997, No. 1296, § 22; 2001, No. 1248, §§ 8-10; 2003, No. 1020, §§ 2-4; 2003, No. 1176, § 1; 2021, No. 927, § 10.

Amendments. The 2021 amendment, in the introductory language of (d), inserted "child support obligations" and substituted "past-due support" for "benefits paid and assigned past due support, future support"; rewrote (d)(1) and (d)(2); deleted "to secure repayment of government benefits paid or assigned child support arrearages, to secure current and future support of children" following "paternity" in (e)(1) and (f)(1); substituted "parent receiving child support services" for "assignee" in (f)(1); in (f)(2), inserted "payee parent or" and "of the child"; and made stylistic changes.

9-14-211. Assigned support rights generally.

(a) Support rights assigned to the Department of Human Services under § 9-14-109 shall constitute an obligation owed to the State of Arkansas by the person responsible for providing the support, and the obligation shall be collectible under all legal processes.

(b) The amount of obligation owed to the state shall be the amount specified in a court order that covers the assigned rights or, when no court order exists, the amount of obligation owed to the state shall be the amount determined by a court based upon the parent's or parents' income or ability to pay during the period of assignment as applied to the Arkansas child support guidelines and family support chart.

History. Acts 1985, No. 989, § 22; A.S.A. 1947, § 34-1240; Acts 1991, No. 369, § 1; 1997, No. 1296, § 23; 2021, No. 927, § 11.

Amendments. The 2021 amendment substituted "parent's or parents'" for "noncustodial parent's" in (b).

9-14-213. Assigned support rights — Notice — Termination of assignment.

(a)(1) When a court has ordered support payments to be paid to or by a payor parent, payee parent, or physical custodian of a child who is receiving assistance under the Transitional Employment Assistance Program, Medicaid, the Supplemental Nutrition Assistance Program, or the Foster Care Program of Title IV-E of the Social Security Act, 42 U.S.C. § 670 et seq., or who has contracted with the Department of Finance and Administration or the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration for child support services, the office shall notify the clerk of the court.

(2) Upon such notice, the clerk shall indicate in the registry of the court that the support is being collected under Title IV-D of the Social Security Act, and the clerk shall redirect all payments received to the office at the Arkansas Child Support Clearinghouse.

(3) Notification to the clerk by the office shall be sufficient to authorize the clerk to redirect payments to the Arkansas Child Support Clearinghouse. The court need not hold a hearing on the matter, and child support shall be paid through the Arkansas Child Support Clearinghouse pursuant to § 9-14-801 et seq.

(b) Lump-sum payments toward arrearages received by the clerk subsequent to termination of the assignment that were collected by the office through debt setoff or legal process shall be redirected to the Arkansas Child Support Clearinghouse.

History. Acts 1985, No. 989, § 24; A.S.A. 1947, § 34-1242; Acts 1997, No. 1296, § 25; 2021, No. 927, § 12.

Amendments. The 2021 amendment rewrote (a)(1).

9-14-237. Expiration of child support obligation.

(a)(1) Unless a court order for child support specifically extends child support after these circumstances, a payor parent's duty to pay child support for a child shall automatically terminate by operation of law:

(A) When the child reaches eighteen (18) years of age unless the child is still attending high school;

(B) If the child is still attending high school, upon the child's high school graduation or the end of the school year after the child reaches nineteen (19) years of age, whichever is earlier;

(C) When the child:

(i) Is emancipated by a court of competent jurisdiction;

(ii) Marries; or

(iii) Dies;

(D) Upon the marriage of the parents of the child to each other; or

(E) Upon the entry of a final decree of adoption or an interlocutory decree of adoption that has become final under the Revised Uniform Adoption Act, § 9-9-201 et seq., and thereby relieves the payor parent of all parental rights and responsibilities.

(2) However, any unpaid child support obligations owed under a judgment or in arrearage pursuant to a child support order shall be satisfied pursuant to § 9-14-235.

(b)(1) If the payor parent has additional child support obligations after the duty to pay support for a child terminates, then either the payor parent, payee parent, physical custodian, or the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration, within thirty (30) days subsequent to the expiration of the ten-day period allowed for the notification as provided in subdivision (b)(5) of this section, may file a motion with a court of competent jurisdiction requesting that the court determine the amount of the child support obligation for the remaining children.

(2) The remaining obligations, subsequent to the expiration of the thirty-day period contained in subdivision (b)(1) of this section, shall be adjusted by operation of law to an amount to be determined by using the most recent version of the family support chart pursuant to § 9-12-312(a)(3) for any remaining children for whom an obligation for child support exists.

(3) If the most recent child support order either was entered before the adoption of revised Administrative Order No. 10 by the Supreme Court on April 2, 2020, and the remaining obligations cannot be adjusted by operation of law without both parents' income, or the support amount, as indicated by the most recent child support order, deviated from the family support chart, then the issue of the amount of the payor parent's child support obligation shall be decided by a court of competent jurisdiction.

(4)(A) In the event a review is requested, the court shall apply the family support chart for the remaining number of children from the date of the termination of the duty, subject to any changed circumstances, which shall be noted in writing by the court.

(B) Deviation from the family support chart shall be noted in the court order or on the record, as appropriate.

(5)(A) The payor parent shall provide written notification of the termination of the duty of support to the payee parent, the physical custodian, the clerk of the court responsible for receipt of the child support payments, the payor parent's employer, if income withholding is in effect, and the office, if applicable, within ten (10) days of the termination of the duty of support.

(B) The payor parent shall enclose with the written notification of termination a copy of the most recent child support order.

(C) The notification shall state the name and age of each child for whom the obligation to pay child support has ceased and the name and age of children set out in prior terminations of child support made pursuant to this subsection.

(c) No statute of limitations shall apply to an action brought for the collection of a child support obligation of arrearage against any party who leaves or remains outside the State of Arkansas with the purpose to avoid the payment of child support.

History. Acts 1993, No. 326, § 1; 1999, No. 1075, § 1; 2003, No. 1020, § 7; 2007, No. 337, § 1; 2009, No. 635, § 1; 2021, No. 927, § 13.

Amendments. The 2021 amendment substituted "payor parent" for "obligor" or similar language throughout the section; substituted "payee parent" for "custodial parent" in (b)(1) and (b)(5)(A); in (b)(3), substituted "revised Administrative Order No. 10" for "the family support chart", inserted "on April 2, 2020, and the remaining obligations cannot be adjusted by operation of law without both parents' income", and inserted "most recent child support" following "indicated by the"; and made stylistic changes.

SUBCHAPTER 4 — STATE COMMISSION ON CHILD SUPPORT

SECTION.
9-14-402, 9-14-403. [Repealed.]

9-14-402, 9-14-403. [Repealed.]

Publisher's Notes. These sections, concerning staff and duties of the State Commission on Child Support, were repealed by Acts 2021, No. 470, §§ 3 and 4, effective July 28, 2021. The sections were derived from the following sources:

9-14-402. Acts 1989, No. 682, § 1; 1995, No. 1184, § 16.

9-14-403. Acts 1989, No. 682, § 1.

SUBCHAPTER 5 — HEALTHCARE COVERAGE

SECTION.
9-14-505. [Repealed.]

9-14-505. [Repealed.]

Publisher's Notes. This section, concerning healthcare coverage premiums not to be deemed or used as a direct offset to child support, was repealed by Acts 2021, No. 927, § 14, effective July 28, 2021. The section was derived from Acts 1991, No. 368, § 6.

CHAPTER 15

DOMESTIC ABUSE ACT

SUBCHAPTER.
2. JUDICIAL PROCEEDINGS.

SUBCHAPTER 2 — JUDICIAL PROCEEDINGS

SECTION.
9-15-219. Order of protection — Course of control — Definitions.

9-15-205. Relief generally — Duration.

CASE NOTES

ANALYSIS

Duration.
Evidence.
Relief.

Duration.

Given the circumstances of this case, the appellate court could not say that the circuit court erred by entering a three-year order of protection in favor of the father with respect to the parties' minor children. Okereafor v. Conley, 2021 Ark. App. 95 (2021).

Evidence.

There was sufficient evidence to support the issuance of a protective order as the circuit court found that the wife was in immediate and present danger of domestic abuse; there was evidence that the wife had suffered injuries at the hands of the husband, the husband threatened to injure the wife, and the husband stated that he would "take out anyone" who tried to take his kids away from him and the only way anyone would get his kids was over his dead body. Steffy v. Steffy, 2021 Ark. App. 171 (2021).

Relief.

Circuit court did not err in entering a protection order against a father prohibiting him from contacting his son because the record sufficiently supported the circuit court's finding that in light of the father's past abusive behavior, his harassing communications could reasonably inflict fear of imminent physical harm in the son. Baltz v. Baltz, 2021 Ark. App. 202 (2021).

9-15-209. Modification of orders.

CASE NOTES

Cited: Okereafor v. Conley, 2021 Ark. App. 95 (2021).

9-15-219. Order of protection — Course of control — Definitions.

(a) As used in this section:

(1)(A) "Course of control" means a pattern of behavior that in purpose or effect unreasonably interferes with the free will and personal liberty of a person.

(B) "Course of control" includes without limitation the following:

(i) Unreasonably isolating a person from his or her friends, relatives, or other sources of support;

(ii) Unreasonably depriving a person of basic necessities;

(iii) Unreasonably controlling, regulating, or monitoring a person's movements, communications, daily behavior, finances, economic resources, or access to resources; and

(iv) Unreasonably compelling a person by intimidation, force, threat of force, or threat based on actual or suspected immigration status to engage in conduct from which the person has a right to abstain or to abstain from conduct in which the person has a right to engage; and

(2)(A) "Disturbing the peace" means a pattern of behavior that unreasonably destroys the mental or emotional calm of a family or household member based on the totality of the circumstances.

(B) "Disturbing the peace" includes without limitation course of control.

(b) A court may enter an ex parte order enjoining a party from engaging in course of control or disturbing the peace, including without limitation through one (1) or more of the following acts:

(1) Molesting the other party;

(2) Attacking the other party;

(3) Striking the other party;

(4) Stalking the other party;

(5) Threatening the other party;

(6) Sexually assaulting the other party;

(7) Battering the other party;

(8) Credibly impersonating the other party;

(9) Falsely impersonating the other party;

(10) Harassing the other party;

(11) Telephoning the other party with the intent to harass the other party;

(12) Destroying the personal property of the other party;

(13) Directly or indirectly contacting the other party with the intent to harass the other party;

(14) Coming within a specified distance of the other party;

(15) Disturbing the peace of the other party;

(16) Disturbing the peace of a family member or household member of the other party; or

(17) Any other act that the court determines should be enjoined.

(c)(1) Upon a showing of good cause, an order of protection may include an order granting the petitioner the exclusive care, possession, or control of an animal owned, possessed, leased, kept, or held by:

(A) The petitioner;

(B) The respondent; or

(C) A minor residing in the residence or household of either the petitioner or respondent.

(2) The court may order the respondent to refrain from:

(A) Coming into contact with the animal; or

(B) Taking, transferring, encumbering, concealing, molesting, attacking, striking, threatening, harming, or otherwise disposing of the animal.

(d) This section does not limit any other remedy available to a petitioner by another provision of law.

History. Acts 2021, No. 1068, § 2.

A.C.R.C. Notes. Acts 2021, No. 1068, § 1, provided: "Legislative findings. The General Assembly finds that:

"(1) In times of natural disasters and crises, the rates of interpersonal violence historically rise, especially among households experiencing significant financial strain;

"(2) The coronavirus 2019 (COVID-19) pandemic has proven this historical trend to be the reality for survivors of domestic violence as police chiefs nationwide reported increases of ten percent (10%) to thirty percent (30%) in domestic violence assaults in the first two (2) weeks after a national emergency was declared in March of 2020, thereby revealing more severe violence as compared with years immediately preceding 2020;

"(3) During the coronavirus 2019 (COVID-19) crisis, reports show this is a worst-case scenario for victims experiencing domestic violence, with the data showing coronavirus 2019 (COVID-19) is being used as a scare tactic to keep victims isolated from their children or support systems;

"(4) Shelter-in-place orders and other restrictions related to coronavirus 2019 (COVID-19) have resulted in victims being isolated from family, friends, and the community;

"(5) While some jurisdictions have reported a drop in domestic violence calls, these reports do not necessarily equate to a reduction in domestic violence; and

"(6) The increased isolation of victims has created an environment in which abuse, including course of control, is more likely to go undetected and, by extension, unreported."

CHAPTER 20

ADULT MALTREATMENT CUSTODY ACT

SECTION.
9-20-121. Availability of custody and protective services records.

9-20-117. Long-term custody and court-ordered protective services hearings.

CASE NOTES

Protective Custody Upheld.

Order that appellant be placed in long-term protective custody was not clearly erroneous because appellant had a physical impairment that prevented him from being able to provide for his own protection and was in need of placement in a 24-hour care facility. Maddin v. Ark. Dep't of Human Servs., 2021 Ark. App. 177 (2021).

9-20-121. Availability of custody and protective services records.

(a) Reports, correspondence, memoranda, case histories, medical records, or other materials, including protected health information, compiled or gathered by the Department of Human Services regarding a maltreated adult in the custody of the department or receiving protective services from the department shall be confidential and shall not be released or otherwise made available except:

(1) To the maltreated adult;

(2) To the attorney representing the maltreated adult in a custody or protective services case when the disclosure is authorized in a court order or an authorization form that complies with the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191, executed by the maltreated adult;

(3) For any audit or similar activity conducted with the administration of any plan or program by any governmental agency that is authorized by law to conduct the audit or activity;

(4) To law enforcement agencies, a prosecuting attorney, or the Attorney General;

(5)(A) To any licensing or registering authority to the extent necessary to carry out its official responsibilities.

(B) Information released under subdivision (a)(5)(A) of this section shall be maintained as confidential;

(6) To a circuit court under this chapter;

(7) To a grand jury or court upon a finding that information in the record is necessary for the determination of an issue before the court or grand jury;

(8) To a person or provider currently providing care or services to the adult;

(9) To a person or provider identified by the department as having services needed by the adult;

(10)(A)(i) To individual federal and state representatives and senators in their official capacity when the disclosure is authorized in a court order or an authorization form that complies with the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191, executed by the maltreated adult.

(ii) Federal and state representatives and senators shall not disclose information obtained under this section.

(B) No disclosure may be made to any committee or legislative body of any information that identifies by name or address any recipient of services;

(11) In the discretion of the department, if the adult is in the custody of the department, the department may share:

(A) Information as permitted by the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191, when the disclosure of information is:

(i) To family, friends, or anyone else authorized by the maltreated adult;

(ii) Needed to assist with the care of the maltreated adult;

(iii) Needed to notify a person of the maltreated adult's location and general condition; and

(iv) Not objected to by the maltreated adult; and

(B) Appropriate information when the maltreated adult is incapacitated when it is in the best interest of the maltreated adult;

(12) To the Office of Medicaid Inspector General; and

(13) To an individual authorized by the maltreated adult in an executed authorization form that complies with the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191, or valid court order.

(b) Except for the maltreated adult, no person or agency to whom disclosure is made may disclose to any other person reports or other information obtained under this section.

(c) A disclosure of information in violation of this section shall be a Class C misdemeanor.

(d)(1) Data, records, reports, or documents released under this section to a law enforcement agency, the prosecuting attorney, or a court by the department:

(A) Are confidential;

(B) Shall be sealed; and

(C) Shall not be redisclosed without a protective order.

(2) Data, records, reports, or documents released under this section are confidential and are items of evidence for which there is a reasonable expectation of privacy that the items will not be distributed to persons or institutions without a legitimate interest in the evidence.

(3) This chapter does not contain language that is deemed to abrogate the right of discovery in a criminal case under the Arkansas Rules of Criminal Procedure or other applicable law.

History. Acts 2005, No. 1811, § 1; 2007, No. 283, § 5; 2015, No. 1214, § 2; 2021, No. 470, § 5.

Amendments. The 2021 amendment, in (a)(10)(A)(ii), substituted "disclose" for "redisclose the" and added "obtained under this section".

section or a law enforceme [illegible] by the department [illegible]

(A) Are confidential [illegible]

(B) Shall be sealed; [illegible]

(C) Shall not be r [illegible]

(2) Data, records [illegible] are confidential and are [illegible] able examination of pri [illegible] persons or institutions [illegible]

(3) This chapter does not contain language [illegible] gate the right of discovery in a criminal case under [illegible] of Criminal Procedure or other applicable law.

History. [illegible] 2005, No. [illegible] § 1; [illegible] in (a)(10) and [illegible] 2007, No. 2 [illegible] 2015, No. [illegible] "realized that" and [illegible] 2021, No. [illegible] "this section".

Amendments. The 2021 amendment, [illegible]